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The Solicitors' Journal

VOL. LXXX. **Saturday, August 15, 1936.** No. 33

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Current Topics.

The Mace and its Significance.

THE gracious gesture made by the Corporation of London in presenting to the City of Vancouver a replica of the mace which is in every day use here in London, with, of course, the necessary modification as to the arms, and bearing this inscription: "Presented by the Corporation of the City of London to the City of Vancouver, on the occasion of the visit of the Lord Mayor, Sir PERCY VINCENT, and a deputation from the Corporation of London, in connection with the celebration of the jubilee of the incorporation of the City of Vancouver, August, 1936," is not only a gift pleasing in itself, but likewise as affording fresh evidence of the fact that in the West, just as with us, the love of artistic symbols persists as strongly as ever. In a variety of spheres the mace plays a notable part. For example, when the Lord Chancellor comes to the Law Courts the mace accompanies him as the symbol of authority, and as all are aware, the mace—once irreverently termed by CROMWELL "that bauble"—is an inseparable adjunct when the Speaker is in the chair of the House of Commons. Many curious usages have grown up in connection with this mace. When a new Parliament is convened, and before the choice has been made of a Speaker, the mace is placed, not on, but under, the table, and there it remains until the royal approval has been given to Mr. Speaker elect. It is curious to note also that when he proceeds to the House of Lords to receive that approval he is preceded by the Sergeant-at-Arms with the mace not over his shoulder, but under his arm, for it is one of the unwritten laws that it is not to be carried in orthodox fashion before the Speaker until the Sovereign has formally approved his election. Such is the ritual which has grown up during the centuries regarding this emblem of the dignity and majesty of the House of Commons.

Authors on the Bench.

THE announcement just made that the next volume in Messrs. Longmans' English Heritage series is to be devoted to English Law and to be from the pen of Lord Justice SLESSER, is a fresh reminder that the bench has always been able to boast of possessing not merely erudite lawyers but also those who cultivated the graces of literature in its many spheres. In the past we had the biographical labours of Lord Chancellor CAMPBELL, which were jocularly stigmatised by Sir CHARLES WETHERELL as having added a new terror to death; later, and in a very different vein, we had the graceful verse of LORD BOWEN. Of the present members of the bench not a few have made valuable contributions to letters. Prominent among these is the Lord Chief Justice, whose writings always command attention both for their matter and for the striking way in which his views are expressed. Mr. Justice MACKINNON is not only an authority on charter-parties and bills of lading, but on that much more human subject—the topography of JANE AUSTEN'S novels, and, indeed, all that relates to that incomparable writer, as well as on every aspect of Dr. JOHNSON, as may be gathered from the collection of papers he brought out a year ago under the somewhat awkward title, "The Murder in the Temple and Other Holiday Tasks." Lord Justice SLESSER has also shown his versatility in authorship by writing an elaborate work on Trades Unions and a volume of graceful verse. The English Heritage series, to which his new book should prove a valuable addition, already includes a little volume of special interest to lawyers, namely, the monograph by Sir MAURICE AMOS on the English Constitution, which in less than two hundred pages compresses a mass of learning about the way we are governed.

Leave to Defend.

WHEN is a defendant to proceedings under Ord. XIV entitled to leave to defend? This question, it might seem, must have been answered definitely long ere this; but a case before the Court of Appeal recently showed that even yet there is still some dubiety in certain quarters on the point. Order XIV, r. 1, says that the plaintiff, on making the necessary affidavit, may apply to a judge for liberty to enter judgment, and "the judge thereupon, unless the defendant shall satisfy him that he has a good defence to the action on the merits, or shall disclose such facts as may be deemed sufficient to entitle him to defend the action generally, may make an order empowering the plaintiff to enter such judgment as may be just, having regard to the nature of the remedy or relief claimed." In the case in question the judge at chambers held that it was not sufficient for the defendant to say "I do not know whether I have a good defence or not, because at the moment I have been unable to find out what are the real facts"; he must swear that he has a good defence to the action, and if he cannot do that he should not be given leave to defend. This ruling, which was made without the authorities being called to the judge's attention, was disapproved and reversed by the Court of Appeal where reference was made to the observations of Baron BRAMWELL in *Lloyds Banking Co.* v. *Ogle* (1876), 1 Ex. Div. 262, 263, that "the power to sign judgment was, in my opinion, intended to apply to those cases which almost on the admission of the defendant

are undefended, and not to cases in which the defendant might reasonably say, 'I do not know if your case is well founded or not, but I require you to prove it.'" A similar opinion was expressed by Lord Justice BRETT in *Ray* v. *Barker* (1879), 4 Ex. Div. 279, 283, in these words: "If therefore the defendant shows such a state of facts as leads to the inference that at the trial of the action he may be able to establish a defence to the plaintiff's claim, he ought not to be debarred of all power to defeat the demand made upon him." This may appear to be an exposition of the obvious, but it is amazing how frequently obvious things are overlooked.

Infanticide.

THE Infanticide Act, 1922, provides by s. 1, sub.-s. 1, that where a woman by any wilful act or omission causes the death of her newly-born child, but at the time of the act or omission she had not fully recovered from the effect of giving birth to such child, and by reason thereof the balance of her mind was then disturbed, she shall, notwithstanding that the circumstances were such that but for the Act the offence would have amounted to murder, be guilty of felony, to wit of infanticide, and may for such offence be dealt with and punished as if she had been guilty of the offence of manslaughter of such child. Sub-section (2) of the same section provides for the return by a jury of a verdict of infanticide in such cases. Readers will recall *Rex* v. *O'Donogue* [1927] W.N. 289, where the Court of Criminal Appeal rejected the argument that the term "newly-born" in the foregoing section was intended to apply to all cases in which a woman had not recovered from the effects of the birth of a child, and in which her mental balance had continued to be disturbed in consequence. LORD HEWART intimated that in order to give effect to that argument it would be necessary to mis-read the Act and to eliminate the epithet "newly-born" from the section. The court did not define the expression but stated that the learned judge, from whose decision the appeal was made, had made no error in law in holding with reference to a child of more than a month old, that there was no evidence on which he could permit the jury to find that the child was "newly-born" within the Act. A few weeks later (see [1927] W.N. 297) this case was mentioned by AVORY, J., in the Court of Criminal Appeal in reference to statements in text-books to the effect that in an unreported case, *Rex* v. *Clifton*, he had held that a child three weeks old fell within the definition. "I was sure," the learned judge said, "that I never held anything of the kind, as I have always been of a different opinion." The case, it was explained, was one in which a woman, alleged to have killed her child three weeks old, was brought up for trial indicted for murder. Evidence was given which showed that she was so insane by reason of puerperal mania as to be unfit to plead, and thereupon an order was made that she should be detained during His Majesty's pleasure. "In these circumstances," the learned judge continued, "the question whether the child was a newly-born child within the meaning of the Infanticide Act, 1922, did not arise, and could not arise, and no decision of that question was there given by me." AVORY, J., said that he made this statement in order to make it clear that he never held an opinion inconsistent with the decision of the Court of Criminal Appeal in *Rex* v. *O'Donogue*.

Alteration of the Law.

IN a recent case before the Central Criminal Court, HUMPHREYS, J., referred to *Rex* v. *O'Donogue* and expressed the hope that Parliament would in the near future be disposed to put a very short section into the Infanticide Act, 1922, saying what was the definition of a "newly-born" child. LORD DAWSON, who gave evidence, was asked by counsel for the accused for a definition of "newly-born," and replied that he would regard it as envisaging the first four weeks succeeding birth. "When we study the mortality of the early period after birth," he added, "we are accustomed to fix a month. I believe the Ministry of Health in their statistics have also adopted a month." After a month there was a confusion between newly-born and infants. The learned judge said that if Parliament were to take the course above indicated he could imagine nothing that would assist it more than the statement they had heard expressed by LORD DAWSON that, from the point of view of medical statistics on the subject of infant mortality, there was classed as mortality of newly-born children the deaths of all those that took place within a month of birth—in other words, newly-born meant four weeks. "I gather," the learned judge continued, "that LORD DAWSON does not disapprove of that, and that, if we must have some time fixed for a child being newly-born and some date when it ceases to be newly-born, four weeks is a reasonable time, having regard to the number of illnesses from which children suffer and sometimes die. That would be the time when, I venture to express the hope, this difficulty will be got rid of by Parliament, so that the Infanticide Act means 'born within so many days.'"

Overcrowding Survey Report.

THE Report on the Overcrowding Survey in England and Wales undertaken by local authorities in accordance with the provisions of the Housing Act, 1935, was published on 31st July (H.M. Stationery Office, price 8s. net). The publication contains a number of interesting and informative tables setting out the present position in considerable detail. Readers desiring full particulars must be referred to the report, it being only possible here to set out a few of the salient figures. An analysis of the average units of accommodation per family of given size shows that the working-class family of average size is housed well above the statutory minimum standard. The total accommodation at the disposal of large families of eight or nine units or more is, however, insufficient, though some such families are not actually overcrowded. This point is illustrated by the fact that the average number of units in a working-class is 3·2, corresponding figures for overcrowded and uncrowded families being 5·6 and 3·11. More than 43 per cent. of the overcrowded families—in all 3·8 per cent. of the 8,924,523 dwellings inspected have been found to be overcrowded—are shown to have at least 80 per cent. of the minimum accommodation required, while only 4·8 per cent. have less than half this minimum. The report shows that 30·4 per cent. of all overcrowded families consist of small families up to four units in size, and that 27·7 per cent. of all overcrowded families consist of families of seven units or more. Of the overcrowded dwellings, 43·3 per cent. are of either one or two rooms, while only 2·7 per cent. have five rooms or more. The average overcrowding percentage for the London boroughs is 7, corresponding figures for county boroughs, non-county boroughs and urban districts, and rural districts being respectively 4·2, 3 and 2·9. The degree of overcrowding in the houses of most local authorities is found to be greater than in privately owned houses. The figures show that of the dwellings owned by housing authorities 5·1 per cent. have been found to be overcrowded compared with 3·7 per cent. in the case of privately owned houses. This is explained by the fact that in providing new houses local authorities have for the most part erected houses of a size suitable for the average working-class family and have given preference to large families unsuitably housed. Interesting particulars are given in the report of the effect of raising the standard of minimum accommodation provided by the Housing Act. If it had been provided that an uncrowded dwelling was one in which it would normally be unnecessary to use the living accommodation for sleeping purposes, the number of overcrowded families would have been raised from 341,000 to 853,000. The former number is, it is intimated, sufficiently high for its abatement to occupy many local

authorities, especially those still heavily engaged in slum clearance, for the next few years. With very few exceptions they should, it is thought, be able to complete it within such a period, and, once the present standard has been generally reached throughout the country, it would not be unreasonable to assume that a higher standard could be achieved within a comparatively short number of years if Parliament decided to raise it.

Re-housing.

THE figures contained in the report, while not enabling a precise estimate to be made of the number of additional houses required to relieve overcrowding at the time of the surveys, furnish some guidance as to the extent of the problem. Thus on the assumption that 60 per cent. of the overcrowded families will need new houses, the number required would be about 200,000. On the basis of a standard which would preclude the use, in normal circumstances, of living accommodation for sleeping purposes the number of new houses required on the same 60 per cent. basis would be 500,000. It should be stated that the figure of 200,000 is not put forward as a reliable estimate, but simply to obtain an idea of the extent of the building problem involved, which will form the next stage in the campaign by the Ministry of Health and the local authorities concerned. Meanwhile it may be noted that local authorities have been asked to forward to the Minister by the first of the present month their estimates of the numbers of new houses required and the numbers and sizes of those which they would probably have to provide themselves. In the light of these figures a more accurate estimate of the task confronting the Ministry and the housing authorities throughout the country will be furnished.

Road Safety.

THE toll of the road, as exhibited by the weekly figures compiled by the Ministry of Transport, continues unabated. Indeed the first thirty-one weeks of the present year show an increase in casualties of 2,607, or 2·04 per cent. over the corresponding period of 1935. *The Times*, which recently gave these and other figures illustrative of the present position, referred to two means about to be taken in the furtherance of road safety. Magistrates throughout the country would, it was said, shortly be asked by the Home Office to enforce rigidly the penalties prescribed by law in cases where safety factors are ignored by drivers of vehicles, while additional publicity is to be given to the Highway Code. The special investigation into the causes of road accidents which, as has been noted in this column, is now being conducted by the Ministry of Transport, shows that disregard of the Highway Code is responsible for the majority of mishaps. In view of this, it is stated, the Minister of Transport has decided to back up the lesson of the film illustrating road dangers, which is to be shown at cinemas throughout the country, by making a further distribution of copies of the Code. It is intimated that the film has been booked by over 1,000 cinemas and that at least 2,000,000 copies of the Code will be handed to patrons.

The Traffic Census.

ONE of the most important factors in road safety is undoubtedly the provision of roads adequate for the traffic which passes over them. The census which is being taken on class II roads during the present week should provide highway authorities with invaluable information in regard to the localities upon which road improvements are most urgent. That many highways of this class, which for the most part link up main thoroughfares, are inadequate in the light of modern requirements can hardly be doubted, particularly in view of the greatly increased volume of traffic in recent years and the less attention which they have necessarily received from authorities primarily occupied with the improvement of the greater arteries of traffic. Special attention is being directed to the needs of better accommodation of pedestrians. A pedestrian count is being taken at selected places where no footpath exists or where the footpath is not wider than three feet. In the latter case separate records are being kept of the number of pedestrians using the footpath and the number using the carriageway. If it were possible to take into account also the condition in which footpaths are maintained in different localities, useful information would be obtained as to how far the tendency of pedestrians to use the roadway is prompted by the often unsuitable character of the way provided for their use. Particulars obtained by the census will also indicate the class, number, and average weight of the vehicles passing the places of observation, and notes will be taken about the road and weather conditions. Moreover, an hourly total, which is being recorded at all places where in 1929—when the last census of class II roads was taken—the total tonnage exceeded 5,000, will give the peak traffic figures, while in some cases the tidal flow of traffic will be indicated by an hourly record of the traffic passing in both directions. Roads in metropolitan boroughs are excluded from the census, as are also those in county boroughs, except where these form effective loops on the outskirts of towns or are in continuation of lengths of road in the country areas. Enumerators are posted at some 4,500 places. Counting takes place between 6 a.m. and 10 p.m.

Private Streets: Frontagers' Apportionments.

THE Minister of Health was recently asked "whether his attention had been directed to the indiscriminate apportionment by local authorities according to frontage of the cost of construction of roads flanking the premises of property owners, whether deriving advantage or the reverse therefrom, such practice being likewise affirmed, regardless of the merits, by justices to whom an appeal under the Private Street Works Act, 1892, rested, and whether he proposed to take any and what steps to abate the injustice occasioned." Mr. SHAKESPEARE, Parliamentary Secretary to the Ministry of Health, has stated in a written Parliamentary reply that the Minister hopes as soon as practicable to introduce a Bill to amend the law of private streets and intimated that the particular matter raised in the question would be borne in mind in the preparation of the Bill.

Rules and Orders: Ribbon Development.

PURSUANT to powers conferred on him by the Restriction of Ribbon Development Act, 1935, the Minister of Health has made the Restriction of Ribbon Development (Determination of Internal Space of Buildings) Order, 1936 (H.M. Stationery Office, price 1d.), which contains directions for the measurement of buildings within s. 17 of the Act. It may be remembered that local authorities are empowered by the Act to insist before passing plans for certain buildings, such as petrol-filling stations, hotels, factories, large blocks, and any privately erected building containing a space of 250,000 cubic feet, that adequate steps shall be taken, such as by the provision of suitable entrances and exits, to limit interference with road traffic. The new Order provides that in measuring the cubic contents of large buildings the space occupied by the thickness of floors and any space inside a pitched or curved roof is to be counted. The Order will come into operation on 1st September.

Fixed Trust Inquiry Report.

THE report of the Departmental Committee appointed last March by the Board of Trade to inquire into fixed trusts in all their aspects and to report what action, if any, was desirable in the public interest, was issued on Wednesday (Cmd. 5259, H.M. Stationery Office, price 1s. net). The Committee has made a large number of recommendations, the chief of which will be indicated in our next issue.

Negative Duties and the Course of Employment.

A NEW and valuable case on the course of employment was decided by the Court of Appeal in *Alderman* v. *G.W.R.* (1936), 52 T.L.R. 404; 80 SOL. J. 286. The appellant was employed as a ticket inspector by the railway company, and his duties took him regularly between Oxford, where his home was, and Swansea, where he finished his day's work at 6.30 p.m. He slept locally and returned to Swansea Station to begin work at 8.30 a.m. One morning while going from his lodgings to the station he slipped on the highway and was injured. The county court judge found that under his contract of service the appellant had the right "after arrival at Swansea, to choose any lodgings in reasonable proximity to his work, to exercise an unfettered right in spending his time between signing off and signing on, and to get to the scene of his work by any route or any method of locomotion he might choose to select. His obligations . . . were to leave his address with his employers, not to go too far away, and to sign on at the company's premises (where his duties lay) at the scheduled hour." In the event of an emergency the company could require his services during these off hours. It was contended that by reason of these obligations the appellant continued in the course of his employment during his stay in or near Swansea. This contention was held to be wrong.

It is clear that an obligation imposed during leisure hours may result in the workman remaining in the course of his employment during that period. In *L.N.E.R.* v. *Brentnall* [1933] A.C. 489, an engine driver was obliged by his contract of employment to take eight hours' rest at the company's hostel. Otherwise he was free to do as he wished. He slipped and was injured in the hostel, and he was held to be still in the course of his employment. This decision is properly contrasted with *St. Helens Colliery Co. Ltd.* v. *Hewitson* [1924] A.C. 59, where the earlier authorities were discussed and a vital distinction drawn between the rights and duties of a servant. The latter must be acting in pursuance of a duty owed under the contract of employment and not simply in exercise of a right granted by it. In this case a colliery worker was injured on a train provided by the company to take its employees to and from work, but which they were not obliged to use. To quote Lord Wrenbury (at p. 95), it must be "in performance of a duty under his contract of service that he is found in the place where the accident occurs. If there is only a right and there is no obligation binding on the man in the matter of his employment there is no liability." *Cremins* v. *Guest, Keen and Nettlefolds* [1908] 1 K.B. 469, and *Walton* v. *Tredegar Iron Co.* (1913), 6 B.W.C.C. 592, which were based on the workman's contractual rights, were over-ruled. It may be noticed, however, that where the means of transit offered by the employer are the only means available owing to the nature of the locality, a term may be implied obliging the employer to provide and the servant to avail himself of such transit, Lord Atkinson (*ibid.*, at p. 70) and *Richards* v. *Morris* [1915] 1 K.B. 221.

In *Alderman* v. *G.W.R.*, *supra*, there was an express obligation upon the appellant that, after signing off at Swansea, he was "not to go too far away"; and if he should go a long way off, it is submitted that the company might summarily dismiss him for breach of duty. His position at Swansea was therefore very different from that of the ordinary employee who can live as far from his work as he wishes provided he reaches his place of employment at the agreed time: *cf.* Greene, L.J., at p. 406. It is difficult to accept the view of Slesser, L.J., at p. 406, that "this case is not very dissimilar from that of *Philbin* v. *Hayes* [1918] 34 T.L.R. 403." There the employer was erecting an extension to his factory and owing to scarcity of local lodging accommodation erected huts in which the workmen might sleep, if they so desired, for a small payment. A hut was blown down in the night and the plaintiff workman therein was injured. The Court of Appeal held that the workman was not then "in the course of" his employment. No obligation was imposed on the workman at all, and the decision is in a line with *Hewitson's Case*, *supra*.

It is submitted that the true *ratio decidendi* in the *Alderman Case* is to be found in the second half of the judgment of Greene, L.J., at p. 407, where he distinguishes between negative and positive obligations. "If the man's contract is that he shall be in a particular place . . . I can well understand an argument that so long as he is there he is doing something which he has contracted to do. If, on the other hand, during a period of rest or holiday his obligation is not to go outside an area, it seems to me impossible to say that it necessarily flows from that that his action in remaining within that permitted area is something done in the course of his employment." He illustrates the case of an employee who contracts not to leave the British Isles while on holiday. "In staying in the British Isles he is not performing his contract; what he is doing is that he is not breaking it, which is quite a different matter. The distinction . . . in other branches of the law may not be a very important one, but when it comes to this particular statute (Workmen's Compensation Act), where it must be shown that the accident arises in the course of the employment, I venture to think that this distinction is a real one." It is fairly clear that any other interpretation would burden the employer with a wholly unjust and irrational liability.

The effect, therefore, of this decision is to exclude negative obligations from those duties imposed on the employee which may show that the course of employment is still subsisting.

Costs.

ACTIONS FOR LESS THAN £100—(*continued*).

WE referred in our last article to a case that had recently arisen in practice where a defendant who had objected to the action being transferred to the county court, and who was successful, claimed that he was entitled to costs on the High Court scale, notwithstanding that the amount of the claim was less than the limit prescribed in the Acts. The action was one for damages and the plaintiff at the time of bringing his action was under the impression, quite honestly, that the amount of damages suffered was sufficient to warrant the action being brought in the High Court.

Section 116 of the County Courts Act, 1919, it will be observed, applies to the plaintiff's costs of action only. It might be argued from this that the proviso to the section, which deals with a case, *inter alia*, where the defendant has objected to the action being transferred to the county court, and gives the court or judge discretion to allow costs in such a case on the county court scale, also should apply to the plaintiff's costs only. If this is the correct interpretation then the successful defendant in such a case would be entitled to his costs on the High Court scale, whatever the amount of the claim and notwithstanding that he had objected to the action being transferred to the county court, and this right could not be altered by the court or judge.

The matter is by no means clear, however, because the proviso states that in a case where the court or judge is satisfied that there was sufficient reason for bringing the action in the High Court, or that the defendant or one of the defendants objected to the transfer of the action to the county court, then the court or judge may make such order as to *costs* as he thinks fit. The "costs" in such event, it will be noticed, are not limited to the plaintiff's costs only. In any case, however, it seems to be clear that failing an order of the court or judge limiting the costs to the county court scale, the defendant must receive his costs on the High Court scale in

the ordinary way, for the section itself, as we have seen, deals only with the successful plaintiff's costs.

The case to which we have referred above was compromised by the plaintiff paying the defendant a lump sum in satisfaction of his costs, and this interesting point was not, therefore, made the subject of an authoritative decision.

Where in the case of an action brought in the High Court the claim is for a debt or a liquidated demand amounting to £20 or upwards, and—

(*a*) the defendant pays the amount claimed or a sum not less than £20 within the time limited by the endorsement on the writ, or

(*b*) the plaintiff obtains judgment for a sum of £20 or more by default of appearance or defence within twenty-eight days after service of the writ, or

(*c*) the plaintiff obtains an order for judgment under Order 14 for a sum of £20 or more,

then the plaintiff shall be entitled to costs on a fixed scale which is set out in Appendix P of the Supreme Court Rules.

So far the matter is clear. It will be observed that s. 116 applies in those cases where the action could have been brought in the county court, but was, in fact, brought in the High Court. Thus, an action for damages arising out of libel or slander, or from breach of promise or seduction, is not an action which could have been brought in the county court, so that whatever the amount of the damages awarded in such a case s. 116, *supra*, will not apply, and the full High Court costs of action will be payable by the unsuccessful party.

On the other hand, s. 56 of the County Courts Acts, 1888 to 1924, provides that all personal actions, where the debt, demand or damage claimed does not exceed £100, may be brought in the county court, with certain exceptions, of which the outstanding examples are those mentioned above, so that the costs of any such actions will be limited as is provided by s. 116.

Moreover, it must be remembered that certain county courts have Admiralty jurisdiction and the limits imposed on the causes which may be brought in these courts are somewhat different from those imposed on other actions for damages, with the result that although the amount recovered may be more than £100, the action might still remain one that "could have been commenced in a County Court." Thus, s. 3 of the County Courts Admiralty Jurisdiction Act, 1868, provides that any county court having admiralty jurisdiction shall have power to try the following causes :—

(A) Salvage claims, where the value of the salved property does not exceed £1,000, or the claim is less than £300.

(B) Claims for towage, necessaries or wages, where the amount claimed does not exceed £150.

(C) Claims for cargo damage or damage by collision, where the amount claimed does not exceed £300.

The test under s. 116 must be made when the sum recoverable is ascertained, and is not to be made by reference to the amount claimed when the action is brought, see *Soloman* v. *Mulliner* [1901] 1 K.B. 76, so that it is not until the action is completed that one knows precisely where one stands as regards costs. For example, an action might be brought for damages for breach of contract and £150 might be awarded by the High Court. The successful plaintiff would then be entitled to costs on the High Court scale. On appeal, however, the amount awarded might be reduced to say £85, and, in the absence of any directions by the court to the contrary, the successful plaintiff's costs would then have to be reduced to the county court scale.

A UNIVERSAL APPEAL

To Lawyers : For a Postcard or a Guinea for a Model Form of Bequest to the Hospital for Epilepsy and Paralysis, Maida Vale, W.9.

Company Law and Practice.

Points and Principles relating to the alteration of a Company's Articles—II.

It will be remembered that last week we dealt with some of the points which arise and which are liable to be overlooked in connection with the alteration of articles of association ; and now I propose to continue the topic in an endeavour to discover some of the principles that are applicable to that operation.

The task is by no means an easy one, as the authorities on the matter are not as definite as might be desired ; and the principles in question concern for the most part the extent to which the majority of shareholders may effectuate validly an alteration in the articles which results in an oppression of the minority. That there must be some limit upon the power of alteration which the Act confers is apparent when we look again at the very wide and general wording of s. 10, which is the material section ; it provides that, subject to the provisions of the Act and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles, and any such alteration or addition so made is, subject to the provisions of the Act, as valid as if originally contained in the articles, and is subject in like manner to alteration by special resolution. Some guidance as to this limit is afforded us by some words of Lindley, M.R., in *Allen* v. *Gold Reefs of West Africa, Ltd.* [1900] 1 Ch. 656—a case to which I had occasion last week to make some reference—in his judgment at p. 671 : " . . . the company is empowered by the statute to alter the regulations contained in its articles from time to time by special resolution . . . ; and any regulation or article purporting to deprive the company of this power is invalid on the ground that it is contrary to the statute : *Walker* v. *London Tramways Co.*, 12 Ch. D. 705. The power thus conferred on companies to alter the regulations contained in their articles is limited only by the provisions contained in the statute and the conditions contained in the company's memorandum of association. Wide, however, as the language of (the) section . . . is, the power conferred by it must, like all other powers, be exercised subject to those general principles of law and equity which are applicable to all powers conferred on majorities and enabling them to bind minorities. It must be exercised, not only in the manner required by law, but also *bonâ fide* for the benefit of the company as a whole, and it must not be exceeded. These conditions are always implied, and are seldom, if ever, expressed. But if they are complied with I can discover no ground for judicially putting any other restrictions on the power conferred by the section than those contained in it."

This decision was followed in the comparatively recent case of *Sidebottom* v. *Kershaw, Leese & Co., Ltd.* [1920] 1 Ch. 154, the facts in which were as follows : the company, which was a private one and in which the directors held the majority of the shares, passed a special resolution to alter its articles by introducing a power for the directors to require any shareholder competing with the company's business to transfer his shares at their full value to the directors' nominees. The plaintiffs carried on a competing business as a firm. They held the minority of the shares and they had voted against the resolution ; and they brought this action for a declaration that the resolution was invalid as against them. The Court of Appeal held that s. 13 of the 1908 Act (which is practically identical, in its material portion, to the present s. 10), empowered the company to introduce into its altered articles anything that might have been included in its original articles, provided that the alteration was made *bonâ fide* for the benefit of the company as a whole ; and a power to expel a shareholder by buying him out was valid in the case of original articles, and could therefore be included in altered articles, subject to the same limitation. Lord Sterndale, M.R., took the view that the whole case resolved itself into a narrow question of fact : namely, when the directors introduced the alteration

giving power to buy up the shares of members who were in competing businesses did they do it *bonâ fide* for the benefit of the company or not? It seemed to him quite clear that it might be very much to the benefit of the company to get rid of members who were in competing businesses. And as Warrington, L.J., observed, "that membership of the company gives some opportunities, possibly, according to the constitution of this body, not very great opportunities, of getting behind the scenes and knowing what the company is doing, there can be no doubt, and it might be greatly to the disadvantage of the company that knowledge so acquired should be exercised by a competitor. Therefore it is desirable that, if there was reason to suppose that it would be exercised, they should have power to remove that competitor from his advantageous position of shareholder. If that be so, and there being in this case no suggestion of fraud, it seems to me that the only inference one can draw is that the company were, in passing this special resolution, acting *bonâ fide* for the benefit of the company at large." Furthermore, as he went on to emphasise, the fact that a particular course of action might be to the disadvantage of some individual shareholder does not of itself prevent the pursuing of that course from benefiting the company. As regards the court's ruling that the power conferred by the alteration was a power which would have been valid in the original articles, that decision was founded on the case of *Albert Phillips and Albert Phillips, Ltd.* v. *Manufacturers' Securities, Ltd.*, 116 L.T. 290; but on that point I will do no more than mention this authority.

But in regard to the formulation of the limitation upon a company's statutory power to alter its articles, the court had to decide whether it should follow *Allen* v. *Gold Reefs of West Africa Ltd., supra,* or the case of *Brown* v. *British Abrasive Wheel Co. Ltd.* [1919] 1 Ch. 290. The company in this latter case badly needed further capital, and the majority representing 98 per cent. of the shares, was willing to provide this capital if it could buy up the 2 per cent. minority. Having failed to effect this by agreement, the majority proposed to pass an article enabling it to purchase compulsorily the minority shares on certain terms, but if the court considered some other mode of ascertaining their value should be used, then the majority was willing to adopt that mode. Astbury, J., came to the conclusion that the proposed article was not, in the circumstances, just or equitable or for the benefit of the company as a whole, but was simply for the benefit of the majority, and that being so, it was not an article which the majority could force on the minority under s. 13 of the 1908 Act. In the course of his judgment he used these words, at p. 295: "The question therefore is whether the enforcement of the proposed alteration on the minority is within the ordinary principle of justice *and*" [the italics are mine] "whether it is for the benefit of the company as a whole." This formulation of the test did not meet with the approval of the Court of Appeal in *Sidebottom* v. *Kershaw, Leese & Co., Ltd., supra,* and the comment of the Master of the Rolls was that "The learned judge there speaks as if those two were different things. I respectfully doubt the accuracy of it because I think it is more accurately expressed by the passage I have cited from the judgment of Lindley, M.R.: 'If they are altered *bonâ fide* for the benefit of the company,' and that the two things are not different things, but if they are *bonâ fide* for the benefit of the company they are consonant with the ordinary principles of justice. Of course that is excluding any question of fraud or malice, which is excluded by the words '*bonâ fide*':" per Lord Sterndale, M.R., [1920] 1 Ch. at p. 163. Warrington, L.J., also gave as his opinion, at p. 172, that the principle upon which Astbury, J., professed to act in *Brown* v. *British Abrasive Wheel Co. Ltd., supra,* would have appeared more clearly if he had not confused himself by seeming to suggest that "*bonâ fide*" and "for the benefit of the company" were two separate things in the exposition of law as given by Lindley, M.R. Eve, J., on the other hand, approached the point from a different attitude, and, after saying that the exercise of the statutory power of alteration of the articles could, in his opinion, be held to be contrary to ordinary principles of justice only in cases where *mala fides* in its exercise had been established, he continued in these words: "That brings one to the question of what is meant by *mala fides* in this connection. Speaking for myself, I do not think the solution of that question is assisted by the use of such phrases as 'the ordinary principles of justice', 'just and equitable,' or 'oppressive.' I prefer the formula which I think was adopted by Lindley, M.R., and I put it in this way: 'Was the resolution adopted, or was the alteration made for the benefit of the company or for the benefit of some section of the company, without reference to the benefit of the company as a whole?'" This definition, by Eve, J., of the test to be observed, embodies all the essentials of the test laid down by Lindley, M.R., but, by reason of the practical clearness of the phraseology, it seems to me that it might well be remembered by us in preference to and in substitution for the words that were used by Lindley, M.R., in *Allen* v. *Gold Reefs of West Africa Ltd., supra,* adding, perhaps, to the end of the question formulated by Eve, J., the words "and was the power exercised in the manner required by law?"

One very important point that arises in connection with this matter is the question of who is to decide whether or not the alteration is for the benefit of the company. In *Dafin Tinplate Co. Ltd.* v. *Llanelly Steel Co.* (1907) *Ltd.* [1920] 2 Ch. 124, the decision of Peterson, J., amounted in effect to saying that, whenever the court and the shareholders may differ in opinion upon what is for the benefit of the company, the view of the court must prevail. But this view of the matter was disapproved by the Court of Appeal in the case of *Shuttleworth* v. *Cox Brothers and Co. (Maidenhead) Ltd.* [1927] 2 K.B. 9, where the decision was, as set out in the headnote to the report, that it is for the shareholders, and not for the court, to say whether an alteration of the articles is for the benefit of the company, provided that it is not of such a character as that no reasonable men could so regard it. By way of amplification of this synopsis let us see the reasons which induced the Court of Appeal to arrive at this conclusion. "So the test is whether the alteration of the articles was in the opinion of the shareholders for the benefit of the company. By what criterion is the Court to ascertain the opinion of the shareholders upon this question? The alteration may be so oppressive as to cast suspicion on the honesty of the persons responsible for it, or so extravagant that no reasonable men could really consider it for the benefit of the company. In such cases the court is, I think, entitled to treat the conduct of shareholders as it does the verdict of a jury, and to say that the alteration of a company's articles shall not stand if it is such that no reasonable men could consider it for the benefit of the company. Or if the facts should raise the question, the court may be able to apply another test—namely, whether or not the action of the shareholders is capable of being considered for the benefit of the company": per Bankes, L.J., at p. 18. And, in similar vein, Scrutton, L.J., observed at p. 23: ". . . where persons, honestly endeavouring to decide what will be for the benefit of the company and to act accordingly, decide upon a particular course, then, provided there are grounds on which reasonable men could come to the same decision, it does not matter whether the Court would or would not come to the same decision or a different decision. It is not the business of the court to manage the affairs of the company. That is for the shareholders and directors. The absence of any reasonable ground for deciding that a certain course of action is conducive to the benefit of the company may be a ground for finding lack of good faith or for finding that the shareholders, with the best motives, have not considered the matters which they ought to have considered. On either of these findings their decision

might be set aside. But I should be sorry to see the court go beyond this and take upon itself management of concerns which others may understand far better than the court does."

To sum up and in conclusion, it will be appreciated that there appears to be a conflict between this principle of limitation upon the power of alteration of articles that we have considered and the principle established by the case of *North-West Transportation Co. Ltd.* v. *Beatty*, 12 A.C. 589, namely, that every shareholder has a perfect right to vote as he may please on any question with which the company is legally competent to deal, although he may have a personal interest in the subject-matter opposed to, or different from, the general or particular interests of the company. The reconciliation between these two, and the conclusion of our inquiry, cannot, I think, be better effected than by quoting the opinion of the learned editors of Buckley, which the Court of Appeal approve in *Sidebottom* v. *Kershaw, Leese & Co., Ltd., supra*, and which is that "possibly the limitation of the power of altering the articles is that the alteration must not be such as to sacrifice the interests of the minority to those of the majority without any reasonable prospect of advantage to the company as a whole."

A Conveyancer's Diary.

Effect of Legitimacy Act, 1926. Disposition Taking Effect Before the Act.

A RATHER interesting point upon the effect of the Legitimacy Act, 1926 was decided by Farwell, J., in *Re Hepworth: Restall* v. *Hepworth* [1936] W.N. 264.

A testator, by his will dated 27th March, 1918, appointed executors and trustees, and after making certain provisions for his wife, including an annuity, and giving an annuity to a granddaughter, devised and bequeathed to his trustees his real and residuary personal estate upon trust for sale and conversion, with a power of postponement upon trust for all or any his children, except his son, W.E.T.H., who being male should attain the age of twenty-one years, or being female should attain that age or marry, if more than one in equal shares, as tenants in common. He also directed that his trustees should retain each such original share and hold it upon certain trusts therein declared during the life of such child, and after the death of such child, as to the capital of such original share for the children or remoter issue of such child as such child should by deed or will appoint, and in default of and subject to any such appointment, in trust for the children or child of such child being at the death of the survivor of him the testator and such child and children then living of any then deceased child of such child of the testator who should attain the age of twenty-one years as tenants in common, but so that the children of any deceased child of such child of the testator should take equally between them the share which their parent would have taken if he or she had survived the testator and such child of the testator had attained a vested interest. The testator died on 23rd September, 1922.

On 31st August, 1915, P.W.G.H., a son of the testator, married the mother of the defendant, O.J.H., who was born on 26th January, 1915, and was legitimated by virtue of s. 1 (1) of the Legitimacy Act, 1926, on 1st January, 1927. There was issue of the marriage three children who were defendants in the proceedings. P.W.G.H. died in 1918 intestate and without having exercised the power of appointment given to him by the testator's will.

The proceedings were by way of an originating summons issued by the trustees of the will to determine the question whether upon the true construction of the will and in the events which had happened O.J.H. was, as a child of the testator son P.W.G.H., entitled to a share of the testator's residuary estate settled on her father and his issue.

The question turned upon the construction of the Legitimacy Act, 1926.

By s. 1 (1) of that Act it is enacted as follows:—

"Subject to the provisions of this section where the parents of an illegitimate person marry or have married one another, whether before or after the commencement of this Act, the marriage shall, if the father of the illegitimate person was or is at the date of the marriage domiciled in England or Wales, render that person, if living, legitimate from the commencement of this Act, or from the date of the marriage, whichever last happens."

Then by sub-s. (3) of s. 1 it is provided—

"The legitimation of a person under this Act shall not enable him or his spouse, children or remoter issue to take any interest in real or personal property save as is hereinafter in this Act expressly provided."

The section enabling a legitimated person to take an interest in real or personal property which but for the Act he or she would not have taken is s. 3, which, so far as material for the present purpose, reads—

"Subject to the provisions of this Act a legitimated person and his spouse, children or more remote issue shall be entitled to take any interest—

* * * *

(*b*) under any disposition coming into operation after the date of legitimation

* * * *

in like manner as if the legitimated person had been born legitimate."

Then by s. 11, the word "disposition" is defined as "an assurance of any interest in property by any instrument whether *inter vivos* or by will."

Farwell, J., decided that O.J.H. was not entitled to share in the testator's estate.

His lordship referred to the sections of the Legitimacy Act which I have mentioned and said that in especial reference to the definition of "disposition" in s. 11 of the Act, that the disposition in question in that case could only be the will of the testator which came into operation on his death in 1922, and O.J.H. had not become legitimated at that time as she did not become legitimated until the Act came into operation, namely, 1st January, 1927.

It seems plain that the intention of the Act is that no person shall become legitimated before the commencement of the Act, although his or her parents may have married at an earlier date, and in the instant case the date of the "disposition" being before the Act came into force the person who was illegitimate at that time could not take in the capacity of a legitimate person.

Landlord and Tenant Notebook.

Forfeiture: Lease Void or Voidable.—II.

IN the present century, the Privy Council has again had occasion to deal with the question whether a forfeiture clause had the effect of automatically determining a lease on the condition being broken, or merely gave the lessor an option; in other words, whether the requirement outlined by Sir Montague Smith in the Privy Council case referred to at the conclusion of my last article was satisfied. In *Quesne Forks Gold Mining Co.* v. *Ward* [1920] A.C. 222, the clause, the construction of which was in issue, ran: "If the said lessee shall cease for the space of two years to carry on mining operations . . . this demise shall become absolutely forfeited and these presents and the term hereby created and all rights, privileges and authorities hereby granted . . . shall, *ipso facto*, . . . cease and be void . . . as if these presents had not been made." These, it was held, were strong words, but not strong enough.

In the meantime a decision of the House of Lords, though not in a landlord and tenant action, had thrown more light on the question and was, indeed, cited in the above case. *New Zealand Shipping Co.* v. *Société des Ateliers et Chantiers de France* [1919] A.C. 1, arose out of a contract, made in 1913, to build a steamer at a French yard. She was to be completed by the 30th October, 1914, unless delay (through strikes, fire, etc.) was inevitable. Four conditions resolutive were provided: bankruptcy of the builders; insolvency of the builders; failure of the builders to deliver; inability of the builders to deliver. The clause used the word "void." France went to war on the 2nd August, 1914; the yard had to stop work; and the shipbuilders and the shipping company invoked the clause. For present purposes, it is sufficient to say that Lord Finlay, L.C., in the course of his judgment in the builders' favour, said that if the breach had been due to bankruptcy or insolvency (even if brought about by unavoidable misfortune) or mere failure to deliver through their default, the clause would not have helped them; and that Lord Atkinson observed that parties could make, if they chose, a valid provision in a contract that if rain fell on the thirtieth day the contract should be void, that being an event over the happening of which neither party had any control. This contract was voidable by either party not in the wrong.

The conclusion seems to be as follows: In all the leading cases between landlord and tenant to which I have referred, the particular forfeiture clause has been held to make the lease voidable and not void. But in each of those cases one of two features has been present: either the case was one in which a defaulting tenant sought to establish that his default had discharged him from obligations; or the clause, while providing that the lease should be or be deemed to be null and void, went on to confer or refer to a right of re-entry. Further, the possibility of an automatic determination has been judicially visualised in two cases. But in no leading case has a landlord claimed possession on the ground that while, if he had forfeited the lease, he would have had to serve the statutory notice, the lease has come to an end owing to a breach of condition without "election" on his part.

The opening words of L.P.A., 1925, s. 146 (1), are: "A right of re-entry or forfeiture under any proviso or stipulation in a lease for a breach of any covenant or condition . . . shall not be enforceable . . . unless," and then come the statutory requirements of service of a notice and its contents.

If, then, an intending landlord desires power to get rid of his tenant without formality and delay if he finds, say, the premises used for forbidden purposes, or not painted when they should have been painted, he must in the first place realise that the tenant's future obligations will perish with his rights. But the owners of goods supplied under hire-purchase agreements having met this difficulty by a provision for payment of specified sums in the event of untimely determination, it should be possible to make corresponding provision for breach of condition subsequent in leases.

Next, to make the intention unmistakable, the landlord must studiously avoid mentioning any right of re-entry. Apart from the fact that that very right, described in those very words (but qualified by others), is the subject of L.P.A., 1925, s. 146 (1), its mention is either repugnant or unnecessary. It is repugnant when the words used profess to create the right; for no event can make the grant both void and voidable, and as the courts have always favoured interpretations which keep relationships alive, the only result would be that the self-determining provision would be ignored. It is unnecessary when the words used profess to declare the right; for that is the province of the law, and as rules of construction always favour giving effective meaning to words and phrases the result would again be a ruling that the intention was to create an option.

For similar reasons it would be advisable to avoid employing the phrase "shall be deemed" which has figured in the clauses reviewed in some of the leading cases. If the intention is that in certain events the relationship of landlord and tenant shall terminate earlier than is provided for by the habendum, it is better to say that it shall then terminate, or that the lease shall then become null and void, than that it shall be deemed to be null and void; for if parties to a contract may thereby restrict their own intellectual freedom, they certainly cannot fetter that of a court of law which, subject to the dictates of Parliament only, does its own deeming.

Lastly, it must be observed that provisions satisfying the requirements could not safely be made applicable to every breach of any covenant, at all events not so as to enable the landlord to evict the tenant without even issuing a writ. The owners of hire-purchase goods, envy of whom prompted the enquiry which caused me to write these articles, have, it is true, evolved agreements which entitle them in events specified to collect the goods without further ado (nor need the van be plain this time). But those events are few in number and limited in variety; as regards default in payment, the landlord's position is as good, for the statute does not affect his right of re-entry for non-payment of rent. Other events, such as removal of the goods from the hirer's premises, are easily established. But when it comes to breach of a tenant's covenant to keep in repair, even of the detailed variety, forcible entry would be a rash proceeding unless a very clear case could be proved; and even questions of user and sub-letting are sometimes very arguable.

Our County Court Letter.

THE LIABILITIES OF DENTISTS.

In the recent case of *Gemmell* v. *Buttle*, at Manchester County Court, the claim was for £29 8s. as damages for breach of contract. The plaintiff's case was that she had paid the above sum to the defendant for a double set of teeth, which he said would be of excellent make and a perfect fit. The first set were uncomfortable, and she had them remodelled. During her subsequent holiday, however, the teeth were so painful that she could neither eat, speak nor sleep, and they shut like a trap. After an unsatisfactory interview with the defendant, the plaintiff left the teeth in his surgery. The defendant did not contend that the teeth were a perfect fit, but his case was that they only needed a little adjustment, and he would make a new set, if necessary. Expert evidence was given that the teeth could have been made to fit, with a small adjustment, which was quite usual. His Honour Judge Leigh observed that it was well-known that false teeth required time to settle, and the defendant had not been given the opportunity of completing his work, as only minor adjustments were required. Judgment was given for the defendant, with costs. Compare a case noted under the above title in our issue of the 26th October, 1935 (79 Sol. J. 789).

WARRANTIES OF CATTLE FOOD.

In the recent case of *Sillito* v. *White*, at Atherstone County Court, the claim was for £28 6s. as damages for breach of warranty. The plaintiff's case was that he had bought some cattle cake from the defendant, but some flattened nails had been found in the cake in May, 1935. Three cowmen gave evidence that nails had been found in the scuttle or receptacle, into which the pieces of cake fell, after being broken in the crushing machine. The latter could not have flattened the nails, however, some of which were also found in the cows' boozing or manger. One nail was actually embedded in a piece of cake, and another was found, after a post-mortem examination, in the stomach of a heifer. The latter had sickened in May, and, after failing to yield milk, had died in September. This was consistent with the nail having been in the body, without immediately perforating the stomach lining.

The defendant had pleaded that the implied warranty, under the Sale of Goods Act, 1893, s. 14, was excluded, as the invoice described the goods as Egyptian cotton seed cattle cake, and it was obviously of foreign origin, the defendant being merely a factor. It was conceded at the trial, however, that cotton cakes, made from cotton seed, were mentioned in Pt. II of the Sched. to the Fertilisers and Feeding Stuffs Act, 1926. In view of s. 2 (2) of that Act (which prohibits contracting out), it was impossible to raise a defence in law. No evidence was called for the defendant, but it was contended that the plaintiff had failed to discharge the onus of proof, viz., that the nails were in the cake supplied by the defendant. The cross-examination had established that (1) cake supplied by other factors was on the farm at the same time; (2) the scuttle was not cleaned out before the defendant's cake was put into it; (3) the manger was in a dark place, and the nails might have been already there before the defendant's cake. It was also contended that the damages were exaggerated, as the amount represented the value of the cow in May, whereas only her value in September was recoverable. His Honour Judge Drucquer gave judgment for the plaintiff for the amount claimed, with costs. It transpired that the defendant had had to dispute liability in order to preserve his rights against prior vendors.

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

"Assessment of Damages."

Sir,—It will be agreed that the first duty of a solicitor is to compromise threatened litigation if by any means possible, consistently with his duty to his client.

In running-down and other cases involving the assessment of damages, certain firms who specialise in this class of business have opportunities of collecting and codifying the results of cases which pass through their own hands as a guide to them in dealing with insurance companies and others. The bulk of the business is concentrated in few hands, and other members of the profession are therefore at a grave disadvantage, particularly when dealing with insurance companies who have the tabulated results of a wide experience readily available as a guide to future settlements.

The enclosed two cuttings taken from the same page of *The Morning Post* of the 18th inst. stand out in sharp contrast. In the one case a young woman secured a verdict for £4,719 at Manchester Assizes for false imprisonment and malicious prosecution. It is true that she had been arrested and subjected to considerable indignity. In the other case at Birmingham Assizes the victim of a road accident who had been turned into a chronic cripple and invalid, and was stated by Mr. Justice Swift to be faced with a life of misery and trouble, secured a verdict of £2,100 only. Can it be said that the damages in the two cases are even remotely commensurate with the injuries suffered? Such disparity of damages renders the task of a solicitor endeavouring to settle similar cases an almost impossible one.

At the same time I would suggest that you would be performing a useful service to the profession if you would open your columns to the publication of the tabulated results of cases taken from the daily press, it being important, of course, to state wherever possible the social position, earning capacity and number of dependents of the plaintiff.

Bath. GEO. E. HUGHES.
22nd July.

[Whilst statistics such as suggested might prove useful in certain limited cases, it is felt that unless damages awarded in unreported or settled cases were also available the figures would not be of much assistance.—ED., *Sol. J.*]

Reviews.

Justice in a Depressed Area. By CHARLES MUIR, Barrister-at-law, with a Foreword by the Rt. Revd. Bishop WELLDON, D.D. 1936. Crown 8vo. pp. (with Index) 216. London: George Allen & Unwin Ltd. 6s. net.

This is altogether a remarkable work. Its author writes from personal experience as a practitioner in the police courts and county courts of Northumberland and Durham, as a member of a Court of Referees under the Unemployment Insurance Acts, as Chairman of an Advisory Committee of a large unemployment centre, and as a lecturer under the auspices of the Workers' Educational Association. His experiences have imparted a novel angle to his opinions on all matters connected with judicial administration, and lawyers will find in this book much food for hearty agreement, for reflection, and certainly for controversy. The book contains a vigorous attack on such respectable and ancient institutions as the jury system, the assize system and the lay magistracy, and a critical examination of the value of oral evidence and cross-examination. The author's own view is that England and Wales should be divided into areas, each with its own civil courts administered by judges resident in the area. Each local court should be departmentalised, so that judges conversant with the law of real property should try real property cases, those conversant with industrial law should try industrial cases and so on. The author favours the representation of both working men and industrialists on the bench in order, as far as possible, to eliminate the lack of uniformity and impartiality resulting from individual whims and prejudices. In the North Eastern area in particular, where the cost of bringing appeals to London is in most cases prohibitive, such a court would be greatly welcomed, and the writer expresses his sympathy with the proposals for reforms on these lines put forward in 1933 by the Newcastle-upon-Tyne Law Society. The handicaps which the administration of modern statutes like the Workmen's Compensation Acts and the Unemployment Insurance Acts place upon the enterprising worker are also attacked with some feeling. This is a brilliant and profound study which deserves the closest attention of all who have the interests of justice at heart.

Books Received.

The Law of the Road. Revised Edition, 1936. Edited by KENNETH A. HARKER, LL.B. London: British Data Service. Price 1s.

The British Year Book of International Law. 1936. Seventeenth Year of Issue. Crown 4to. pp. vi and (with Index) 260. London and Oxford: Humphrey Milford, Oxford University Press. 16s. net.

Leading Cases on Income Tax. By L. C. GRAHAM-DIXON, of the Inner Temple, Barrister-at-Law. 1936. Royal 8vo. pp. xxxiii and (with Index) 509. London: Sir Isaac Pitman & Sons, Ltd. 30s. net.

Solicitors Remuneration, 1936. Supplement to Guide to the Preparation, etc., of Bills of Costs (13th Edition). By A. W. PORTER and F. G. WORTHAM. 1936. London: Waterlow & Sons, Ltd. 1s. net.

Tolley's Complete Income Tax Chart Manual, 1936-37. By CHAS. H. TOLLEY, A.C.I.S., F.A.A., Accountant. 21st Edition. 1936. London: Waterlow & Sons, Ltd. 4s. post free.

Report of the Advisory Committee on the Scientific Investigation of Crime. 1936. London: H.M. Stationery Office. 2d. net.

H.M. Land Registry: Registration of Title to Land. 1936. London: H.M. Stationery Office. 1s. net.

[All books acknowledged or reviewed can be obtained through The Solicitors' Law Stationery Society, Limited, London, Liverpool and Birmingham.]

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, or any member of the Staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Scope of Restrictive Covenant.

Q. 3361. Clients of mine are negotiating for the purchase of a piece of land, on which there is a covenant with the owners for the time being of adjoining property that no factory, workshop, *hotel*, asylum, or other building of *any kind which may be or become a nuisance or annoyance* to the then vendor or any owner or occupier of adjoining premises, shall be erected, or built, or suffered to be erected or built. My clients, if they purchase the property, propose to erect a public-house. Will this come within the restriction as to the erection of an "hotel," or would it be covered by the general words at the end of the restrictive covenant? The only definition of an hotel that I have been able to find, is that in the Licensing Acts, which describes an hotel as being primarily used for the reception of guests and travellers desirous of dwelling therein. In my clients' house the only sleeping accommodation would be for the use of the tenant and his staff.

A. The opinion is given that a covenant, which prohibits an hotel, also *a fortiori* prohibits a public-house. The latter is usually regarded as less desirable than an hotel, and would therefore be prohibited, in any case, by the general words at the end of the covenant. Modification or discharge of the covenant should be sought, under the L.P.A., 1925, s. 84, if the neighbourhood has deteriorated.

Change of Infant's Surname.

Q. 3362. A gentleman, who had a son four years old, changed his name by deed poll. Does the infant's name change with the father's, or must the infant retain the father's original name, or has the infant, when he comes of age, or at any other time, a right to elect?

A. A surname only depends upon repute, and, for convenience, the infant's name will probably be changed by his parents. This will be to avoid the impression that he is only a stepson or an adopted son. For official purposes, however, such as proving date of birth for entry into schools, the infant will require to be known by the name in his birth certificate. The infant has a right to elect at any time, as the regulations for Deeds Poll for Change of Name (set out at p. 1330 of the "Annual Practice," 1936) do not specify any minimum age for the declarant. A deed poll is not necessary, but is useful, for establishing the identity of the declarant with the person named in his own birth certificate.

Investment of Funds of Golf Club.

Q. 3363. The rules of an unincorporated golf club relating to the powers of the committee provide—

> Rule 6. Powers of Committee.—The Committee, in addition to the powers hereinafter specifically conferred upon them, shall have the control of the finances of the Club, power to engage, control, and dismiss the Club servants, and all such administrative powers, including the power to cancel the membership of any Member for non-payment of subscriptions due under Rule 13, as may be necessary for carrying out the objects of the Club in accordance with these Rules.

The above rule is the only one relating to the finances of the club. Four members of the committee are the lessees of the present golfing land as nominees for the club. A substantial sum, being the accumulated profits of the club, has been invested by the committee in trust securities. As a safeguard to the four nominees, who would be liable to considerable expense in reinstating the land to its former state at the end of the present lease, the investments have been taken in their names. The committee desire to purchase certain farm lands as an investment so that they will be certain of a golf course when the present lease expires. If the committee call a meeting of the members to get their approval to the suggested purchase, and the information leaked out as to which farm lands they had in mind, the price would undoubtedly go up considerably against the committee.

(1) Are the members of the committee strictly trustees on behalf of the club, and can they only invest the funds in trustee securities?

(2) Would the committee who "have the control of the finances of the club" by the above rule be justified in making the suggested purchase, or would it be absolutely necessary to call a meeting of the members to approve of such a purchase?

A. (1) The members of the committee are not strictly trustees on behalf of the club, in the sense that they are not limited to trustee securities in investing the funds. If the trustees, however, were to make a personal profit out of any investment of golf club funds, they would be constructive trustees, for the members, of such profit, and would be accountable therefor to the club.

(2) The rule quoted will justify the trustees in making the suggested purchase. In view of the wide terms of the rule, it is unnecessary to call a meeting of the members to approve the purchase.

Deposit in Lieu of Recognisance.

Q. 3364. A was convicted of certain offences in a court of summary jurisdiction and fined. A gave notice of appeal against convictions and sentences, and A and a surety B deposited £10 each with the clerk to the justices in lieu of entering into recognisances to prosecute the appeal. The Appeals were heard at Quarter Sessions and dismissed with costs. The respondents' costs were taxed at £47. The order for payment of the costs was served upon A. The costs were not paid. The costs being a "civil debt" judgment for same was obtained in a court of summary jurisdiction. There are no goods upon which distress can be levied. A having prosecuted his appeal is entitled to the £10 paid by him to the clerk to the justices, but same is still in the latter's hands.

(*a*) Can the respondents garnishee the £10 by garnishee proceedings in a county court?

(*b*) Is the order of the Quarter Sessions and/or the judgment of the court of summary jurisdiction a judgment upon which a county court could act?

(*c*) If garnishee proceedings cannot be commenced what jurisdiction (if any) is vested in the Quarter Sessions to order the clerk to the justices to pay the £10 to respondents?

A. The £10 is a debt due from the Crown, and therefore cannot be the subject of garnishee proceedings. Questions (*a*) and (*b*) are therefore answered in the negative. In answer to Question (*c*): Quarter Sessions only have jurisdiction to direct the clerk to dispose of the money if the deposit is forfeited. As the appeal was duly prosecuted the deposit is not forfeited, and the Quarter Sessions have no jurisdiction to prevent the return of the £10 to A, either by ordering it to be paid to the respondents, or otherwise.

To-day and Yesterday.

LEGAL CALENDAR.

10 AUGUST.—"Throughout the night the Chief remained in a broken slumber, half sleeping, half waking. Towards morning, the patient grew a little uneasy and restless; yet there were no alarming symptoms.... Then a change appeared in the face. The shadows had fallen suddenly: the night was quickly closing in. The end was near. It had come swiftly. And as the dawn broke, with his wife and children praying by his side, and on his lips the words, 'My God, have mercy upon me,' Charles Russell passed away." So died Lord Russell of Killowen, on the 10th August, 1900.

11 AUGUST.—On the 11th August, 1843, there came on at the Westmorland Assizes a curious case in which Lord Brougham figured as a plaintiff. One Thomas Bird had challenged his title to Brougham Hall, his mansion, himself claiming to be entitled to it, and attempting to take possession. Perhaps he had been encouraged to do so by the obviously extravagant pretensions of the ex-Chancellor as to the length of time the place had been in his family. At the trial, possession since the time of Antoninus was hinted at, but, as Sir Thomas Wilde appearing for the plaintiff said, a clear title for sixty years was sufficient, and "to go further would be to overload the case with unnecessary proof."

12 AUGUST.—On the 12th August, 1818, there occurred an event unprecedented in the history of assizes. The commission for holding the Gloucester Assizes on that day was rendered nugatory by reason of their not having been opened before midnight on the commission day. There were twenty-one cases in the list and seventy prisoners awaiting trial. Plaintiffs, defendants, prosecutors, witnesses, prisoners' friends and over a hundred jurors, all waited anxiously for the arrival of the judges who did not come.

13 AUGUST.—Midnight had struck and at last, at half past twelve, Mr. Baron Garrow's carriage rolled into the town, having raced thither as fast as the hilly roads from Monmouth would allow. There and then he opened the commission subject to further deliberation on its legality. At midday on the 13th August, the judge proceeded to the Cathedral and the Court-house where, after some consideration, he adjourned the proceedings till two o'clock when Holroyd, J., was expected. At the further sitting it was decided to dispatch the Under-sheriff to London in a post-chaise and four with a letter to the Lord Chancellor. The whole business of the assize was suspended for two days.

14 AUGUST.—On the 14th August, 1899, the trial of Colonel Dreyfus at Rennes had reached a critical stage. General Mercier, the chief witness for the prosecution, was to give evidence, and at seven o'clock in the morning the court had just assembled full of expectation when everyone present was horrified by the announcement that Maître Labori, the prisoner's counsel, one of the finest leaders of the French Bar and its most formidable cross-examiner, had been shot in the back while walking from his house to the court. He did not die, but the loss of his advocacy at that stage of the trial was a terrible blow to the defence.

15 AUGUST.—On the 15th August, 1838, George Maslin, a labourer, was tried at Devizes for shooting Bryan Rumball, a farmer, with intent to murder him, as he was riding home from market. The prisoner had been traced by his footprints. A man sent to gaol for taking a bit of wood in the hard weather gave evidence of a prison conversation in which the accused had admitted his crime, saying that Rumball was a bad sort of man to the poor. The defence pleaded that the wound which was in the arm did not come within the description in the indictment of "a bodily injury dangerous to life." But Maslin was convicted and hanged.

16 AUGUST.—On the 16th August, 1649, Colonel John Morris was condemned to death at York for his defence of Pontefract Castle against the Parliament.

THE WEEK'S PERSONALITY.

The exploits of Colonel Morris fulfil the most romantic notions of the exploits of the Cavaliers during the Civil Wars. He was about thirty when, under pretence of selling beds to the Parliamentarian Governor of Pontefract Castle for the garrison, he and a handful of men disguised as traders captured the place, and being strongly reinforced by other loyalists, held it for almost a year. When at last surrender was inevitable, Morris was among those excepted from mercy, but the opposing general agreed that he should make his escape if he could. He succeeded, cutting his way out and reaching Lancashire. Eventually, he was captured and brought to trial at York. Before two judges set on his condemnation he energetically defended himself, declaring that he had acted for the King and could not commit treason against the Parliament. He protested, too, that he, a prisoner of war, should thus be tried. Before the verdict was even delivered he was put in irons, and when he was sentenced to death, he thanked God that he died in a good cause and with a good conscience, and prayed for a blessing on King Charles. A few days after he and another officer tried with him almost succeeded in escaping from York Castle, but his companion having broken a leg by a fall, Morris, though he might have got away, stayed and shared his fate.

YOUTH ON TRIAL.

The last sessions at the Old Bailey were made remarkable by the first appearance of a boy of sixteen on a murder charge since the passing of the Children's Act, 1933. In the first half of the last century, many small children used to appear there on capital charges arising out of minor thefts. The youngest condemned was, I think, a boy of eight, and his trial lasted just eight minutes. That was almost a matter of routine, but long before, the trial of William Chetwynd, a young gentleman of fifteen, for the murder of a schoolfellow, Thomas Ricketts, had created a great stir. The two boys were pupils at Mr. Clare's Academy in Soho Square. The trouble arose out of a piece of cake. The fatal instrument was a penknife. Young Chetwynd had a simnel cake and had just cut himself a slice when Ricketts, a bigger boy, snatched it from him and refused to give it up, laughing at him. In a rage, the smaller boy struck him a backhanded blow with the hand that held the knife, inflicting a fatal wound in the stomach. Chief Justice Lee presided at the trial; eminent counsel raised weighty points of law which were reserved, the jury returning a verdict finding the facts specially. But in the end, after a salutary sojourn in Newgate, the young prisoner received a royal pardon.

A WARNING TO COCKERELS.

In the great case of the 750 crowing cockerels, heard before Mr. Justice Greaves-Lord in the King's Bench Division, an injunction was granted obliging their owner to keep them outside what the plaintiff's learned leader called a "demilitarised zone." He added that if necessary the plaintiff would come to the court for "sanctions." What form these would take one can only guess, but there is a South African precedent that might prove useful. About 1883, while a Republican judge called Burgers was going on circuit at Lydenburg, the proceedings in court were constantly disturbed by the crowing of a cock. At last, the learned judge lost all patience. He stopped the case, sent the sheriff out to bring the offender before him and then solemnly sentenced it to death for contempt of court. A policeman acting as executioner was ordered to wring its neck, and the case proceeded. The usher in the court of Greaves-Lord, J., would have a busy time if he had to deal with 750 cockerels.

Notes of Cases.

Court of Appeal.

Craven-Ellis *v.* Canons Ltd.

Greer and Greene, L.JJ. and Talbot, J.
26th, 27th and 28th May and 6th July, 1936.

COMPANY—IMPLIED REQUEST TO DIRECTOR—AGREEMENT TO ACT IN ESTATE DEVELOPMENT—CONTRACT NOT BINDING—QUALIFICATION SHARES NOT ACQUIRED—*Quantum Meruit*—COMPANIES ACT, 1929 (19 & 20 Geo. 5, c. 23), s. 141.

Appeal from a decision of Goddard, J.

In 1928, the plaintiff, a valuer and estate agent, became a director of the company, but neither he nor the other directors obtained their qualification shares. In 1931, an agreement under the company's seal was executed appointing him managing director, and reciting the terms of his remuneration in respect of services in developing a certain estate. Until the company purported to put an end to the agreement, he continued to perform all the services mentioned in the agreement. In this action he sought to recover under the agreement, or alternatively on the basis of *quantum meruit*. The defendant company contended that the agreement was made in purported confirmation of his appointment as managing director on the terms stated therein, including an undertaking to put his expert skill at their disposal and that, as he had never acquired his qualification shares required by the company's articles, the matters in respect of which the claim was made were illegal under s. 141 of the Companies Act, 1929. Goddard, J., gave judgment for the defendants.

GREER, L.J., allowing the plaintiff's appeal, said that the contract having been made by directors who had no authority to make it with one of themselves who had notice of the want of authority, was not binding on either party. It was no obstacle to the implied promise to pay on a *quantum meruit* basis arising from performance of services, and implied acceptance by the company. It had been contended that as the services were done under what all the directors thought was a binding contract, there could be no *quantum meruit* claim, and *In re Allison, Johnson & Foster* [1904] 2 K.B. 327, at p. 330, was relied on, but the inference of a promise to pay on a *quantum meruit* basis was not an inference of fact. It was an inference imposed on the parties by a rule of law where work had been done under what purported to be a binding contract, but was not so in fact. His lordship also referred to *Prickett* v. *Badger*, 1 C.B. (N.S.) 296, *Clarke* v. *Cuckfield Union Guradians*, Bail. Ct. Cas. 81, *Lawford* v. *Billericay Rural District Council* [1903] 1 K.B. 772, and *Nicholson* v. *Bondfield Union*, L.R. 1 Q.B. 520, and said that although he did not disagree with the decision in *In re Allison, Johnson & Foster, supra*, the passage at p. 330 relied on by the respondents was not a correct statement of the law.

GREENE, L.J. and TALBOT, J., agreed.

COUNSEL: *Pritt*, K.C., and *V. Holmes; Croom-Johnson*, K.C., and *R. A. Willes*.

SOLICITORS: *Kenneth Brown, Baker, Baker; Ward, Bowie & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

National Carbonising Co. Ltd. *v.* British Coal Distillation Ltd.

Slesser and Romer, L.JJ., and Eve, J.
18th and 19th June, and 7th July, 1936.

PATENT—LICENCE—AGREEMENT OF LICENSEE TO COMMUNICATE FURTHER IMPROVEMENTS—PATENTEE'S ASSIGNMENT OF PATENT AND BENEFIT OF AGREEMENT.

Appeal from a decision of Clauson, J.

In 1931, L. & N. Coal Distillation, Ltd., being owners of certain letters patent granted to the defendant company (then known as Leicestershire (L. & N.) Coal Distillation, Ltd.) a licence to work the processes patented within a defined area. By cl. 2 of the agreement, the patentee agreed to communicate to the licensees any improvements in the invention which they might discover or become entitled to, giving full information and details and demonstrating the exact mode of working the same. By cl. 3, the licensees undertook a corresponding obligation. In 1932, the licensees were granted letters patent in respect of a further invention falling within cl. 3. In 1933, the original patentee, having gone into liquidation, purported to assign the patent, subject to and with the benefit of the licence agreement, to the plaintiffs, who in this action claimed a declaration that the defendants were bound to supply to them full particulars of further inventions under cl. 3. The defendants denied that the licence was assignable. Clauson, J., dismissed the action.

SLESSER, L.J., allowing the plaintiffs' appeal, said that the absence of an express reference in a contract to assigns was not conclusive that it was not assignable (see *Tolhurst* v. *Associated Portland Cement Manufacturers* (1903) *Ltd.* [1903] A.C. 414, at p. 416). Patent rights could be transferred from the original patentee to any other person. So far as a licence was onerous on the patentee, the patentee, having divested himself of his rights to the extent of depriving himself of the power of enforcing them under the patent against the licensee in respect of acts falling within the terms of the licence, could only assign the benefits of the patent subject to that limitation. Here, under the licence agreement, the patentee also received benefit, and those benefits could be properly assigned along with the patent itself. There was here no such dependence on mutual personal confidence and personal skill as to prevent the inference that the parties intended the licence to be assignable. There was no obligation on either to make further inventions or improvements, and the case was distinguishable from *Jaeger's Sanitary Woollen System Co., Ltd.* 77 L.T. 180, and *Kemp* v. *Baerselman* [1906] 2 K.B. 604. His lordship further considered the terms of the agreement, and, holding that on its true construction the licence was assignable, said that the plaintiffs were entitled to the declaration.

ROMER, L.J., agreed, and in the course of his judgment said that it had been suggested in argument that a licence only conferred some interest in equity which would not prevail against the title of a purchaser of the legal interest in the letters patent without notice of the licence. There was no foundation for that contention.

EVE, J., agreed.

COUNSEL: *Vaisey*, K.C., and *Lloyd-Jacob; Roxburgh*, K.C., and *G. W. Tookey*.

SOLICITORS: *Slaughter & May; Nicholson, Graham & Jones*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

London County Freehold and Leasehold Properties Ltd. *v.* Berkeley Property and Investment Co. Ltd.

Slesser and Romer, L.JJ., and Eve, J.
9th, 10th and 11th June, and 7th July, 1936.

CONTRACT—PURCHASE OF BLOCKS OF FLATS—REPRESENTATION AS TO PUNCTUAL PAYMENT OF RENTS—SIGNED BY SOLICITOR AND MANAGING DIRECTOR OF VENDORS—RELIANCE ON INFORMATION GIVEN BY HIS PROPERTY MANAGER TO HIS MANAGING CLERK—REPRESENTATION UNTRUE—WHETHER COMPANY LIABLE IN RESPECT OF INFORMATION SUPPLIED BY PROPERTY MANAGER—WHETHER WARRANTY.

Appeal from a decision of Goddard, J.

In 1932, the plaintiffs were considering the purchase of four large blocks of flats and were supplied by the owners, the defendants, with schedules showing the rent roll to be £80,165 in respect of 416 flats. The plaintiffs having offered a price

subject to contract, A.D., who was both managing director of the defendant company and its solicitor, sent their solicitors a draft contract. Before agreeing it, the plaintiffs asked the question appearing in red ink on the draft whether the tenants' rents were paid punctually and without dispute. The reply appearing in green ink on the draft under A.D.'s signature was that there were no disputes and the rents were paid promptly with very few immaterial exceptions. The plaintiffs contended that they were induced to purchase the property by this representation, which in fact proved to be inaccurate, as in eleven cases the rents were not paid promptly and the loss through failure of payment might amount to £875 a year. In the final agreement as executed there was no reference to the punctual payment of rents. In fact, A.D.'s signature had been made by his managing clerk, D.R., who had consulted A., the property manager of the defendants, with regard to the question and received information from him in accordance with which the answer was given. A. approved the statement made. A.D. received no information from A. The plaintiffs having brought an action for damages for fraudulent misrepresentation and alternatively breach of warranty, Goddard, J., held that there was no fraud, but awarded £6,700 damages for breach of warranty. There was an appeal by the defendants and a cross-appeal by the plaintiffs.

SLESSER, L.J., in giving judgment, said that the cases amounting to £875 loss of rent could not properly be described as "very few and immaterial." It was arguable that they might be called "very few," but the word "immaterial" was an assurance that the plaintiffs, in calculating the value of the property, might disregard unpunctuality and disputes. Goddard, J., had held that a collateral warranty had been broken. His lordship referred to *Dawsons, Ltd.* v. *Bonnin* [1922] 2 A.C. 413, and *Heilbutt, Symons & Co.* v. *Buckleton* [1913] A.C. 30, and said that the learned judge was wrong as there was no evidence that the parties ever intended to enter into a collateral contract at all. This answer was no more than a representation made in the course of negotiations. There was evidence that, had the true facts been known, the company might have purchased at a reduced price, and this case was, therefore, in contrast with *Morgan* v. *Griffith*, L.R. 6 Ex. 70; *Angell* v. *Duke*, L.R. 10 Q.B. 174; and *De Lassalle* v. *Guildford* [1901] 2 K.B. 215. On the point of fraud raised by the cross-appeal, the question was whether when the defendants' agent who made the representation to the plaintiffs believed it to be true, while his informant, also an agent of the defendants, knew it to be untrue, but made no representation to the plaintiffs, the company might be found liable in fraud, the elements of fraud being collected among its different agents. His lordship referred to *Cornfoot* v. *Fowke*, 6 M. & W. 358, *Barwick* v. *English Joint Stock Bank*, L.R. 2 Ex. 259, and *Ludgater* v. *Love*, 44 L.T. 694. The view that a fraudulent representation could not be imputed to a principal was disapproved in *S. Pearson & Son, Ltd.* v. *Dublin Corporation* [1907] A.C. 351, at pp. 354, 357. The physical act of several agents might collectively make a principal responsible, and the same might apply to states of mind. Principal and agent were one in law for the purpose of acts making up fraudulent misrepresentation. A. stated what was untrue to his knowledge to D.R., who innocently used it to induce the plaintiffs to act to their own detriment, and the defendant company might thus be said to be guilty of fraudulent misrepresentation. The plaintiffs would succeed, the damages being the difference between the amount they would have paid had they known the actual circumstances and the price they actually paid. The damage must be taken to be as at the date of the action brought, but in assessing the loss suffered in respect of each particular flat and considering it in relation to the diminution of the price the plaintiffs would have paid had they known the truth, actual subsequent facts relieving the tribunal of the burden of estimating those facts could be regarded. The damage was not necessarily limited to the financial condition of the flats when the action was brought, but the further financial history of the flats was a factor to be considered. The fact that in arriving at the purchase price the plaintiffs used a formula making percentage allowances for empty flats was irrelevant and could not be taken into account.

COUNSEL: *Wallington*, K.C., and *S. Gates*; *Birkett*, K.C., and *H. G. Robertson*.

SOLICITORS: *Cosmo Cran & Co.*; *Hyman Isaacs, Lewis & Mills*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

Holland *v.* Administrator of German Property.

Clauson, J. 26th and 29th June and 9th July, 1936.

TRUST—NATURALISATION OF BENEFICIARY—BECOMING ALIEN ENEMY—PAYMENT OF INCOME TO HER AFTER WAR TILL DEATH—TRUSTEES AWARE OF NATURALISATION—RIGHTS OF ADMINISTRATOR OF GERMAN PROPERTY AGAINST THEM—RELIEF—TRUSTEE ACT, 1925 (15 Geo. 5, c. 19), s. 61.

A British national, who died in 1896, by his will gave his wife a life interest in his residuary estate, which he directed after his death to be held in trust for his four children. One quarter of the trust fund he directed to be held in trust for one of his daughters for her life, and after her death, in the events which happened, to be held in trust for her children. This daughter, her husband and children, all British nationals, lived in Germany. At the outbreak of war in 1914, the plaintiff, another of the testator's daughters, was one of the trustees. (One of the other trustees died in 1915 and the other retired in 1919.) During the war the daughter resident in Germany and her husband and children became naturalised Germans. She had no communication with relatives in England from her mother's death in 1917 till the war ended. In 1919, the son and brother-in-law of the plaintiff were appointed trustees of the testator's will with her. Under the Trading with the Enemy Acts, returns were made of the income belonging to the daughter living in Germany. After the Armistice, when licences were no longer required to send remittances to British subjects abroad, money was sent to her from time to time, arrangements being made for the paying to her of her income from the trust fund. When she came to England in 1927, her sister and her sister's son first heard of the naturalisation, but neither the other trustee nor the trustees' solicitors knew of it till her death in 1934. Up to that time, she had received her income under the trust. (Under an agreement with the German Government operating from September, 1929, the British Government consented to release all German-owned property under the control of the Administrator of German Property.) In December, 1934, the Administrator, having been informed of the facts of this case by the solicitors to the trustees, claimed that the plaintiffs should personally pay him the amount of the income paid to the naturalised daughter between the end of the war and September, 1929, and a sum representing a 2 per cent. fee on the income paid to her from the 1st September, 1929, till her death. The plaintiffs having refused, he declined to assent to the release of any funds passing under the testator's will subject to the charge created by the Treaty of Peace Order, 1919, as amended. In this action, the plaintiffs claimed a declaration that the sum alleged was not due from them and, alternatively, that they were entitled to relief under s. 61 of the Trustee Act, 1925, and also an injunction restraining the defendant from demanding payment as a condition for releasing the sums held by them in trust. The Administrator counter-claimed for a declaration that the plaintiffs were accountable to him for the whole sum, or, alternatively, that the trustees, who learned of the naturalisation in 1927, were accountable for so much of the income as

was received between that date and September, 1929. He also claimed the sum representing the 2 per cent. fee.

CLAUSON, J., in giving judgment, said that till the recipient's death it never occurred to any of the trustees that the naturalisation affected her right to the income. The Treaty of Peace Order, 1919, did not create any "charge" on the property of a German in favour of the Administrator in the sense in which that word was used in English law (see *Administrator of German Property* v. *Knoop* [1933] Ch. 439; *In re Schiff* [1921] 1 Ch. 149). Nor did it operate as a statutory assignment to him of this life interest. It had been argued that the trustees had not acted reasonably and should not be excused for this imputed breach of trust, since *ignorantia legis non excusat*, and on hearing of the naturalisation, they should have realised the illegality of making the payments to a German. In applying s. 61 of the Trustee Act, 1925, however, the court was not to be limited by that maxim (see *In re Kay* [1897] 2 Ch. 518; *In re Allsop* [1914] 1 Ch. 1). In the circumstances, these trustees had not acted unreasonably and should be excused. The plaintiffs succeeded.

COUNSEL: *Simonds*, K.C., and *J. W. S. Armstrong*; *The Solicitor-General* (Sir T. J. O'Connor) and *J. Stamp*.

SOLICITORS: *Johnson, Jecks & Colclough*; *Solicitor to the Clearing Office*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Attorney-General *v.* Oldham Corporation.

Bennett, J. 16th and 17th June and 9th July, 1936.

LOCAL GOVERNMENT—CORPORATION AUTHORISED TO SUPPLY GAS, WATER AND TRANSPORT—RESERVE FUND OF UNDERTAKING—TRANSFER OF SUMS TO CARRY OUT PUBLIC WORKS IN RELIEF OF UNEMPLOYMENT DISTRESS—WHETHER *Ultra Vires*.

The corporation, a county borough to which the provisions of the Local Government Act, 1933, applied, was authorised by statute to supply gas, water and transport, not only in their own area, but also in various other areas. The Oldham Corporation Act, 1925, s. 310, provided that all revenue received by the corporation on account of the revenue of those undertakings should be carried to and should form part of the borough fund, and all payments and expenses in respect of the undertakings should be paid out of that fund. And s. 311 (1) provided that the corporation should keep accounts distinguishing capital from revenue and, as regarded the revenue accounts, showing, under a separate heading in respect of each of the undertakings, on the one side all receipts and on the other side all payments, the payments being divided so as to show the amounts expended in respect of various items, including: "(*f*) In the case of the gas undertaking, an appropriation in relief of the borough rate of an annual sum of £4,000; (*g*) The amount (if any) paid to a reserve fund which the corporation are hereby authorised to maintain (if the corporation think fit) in respect of the undertaking, by setting aside such an amount as they may from time to time think reasonable . . . and accumulating the same . . . which fund shall be applicable to meet any extraordinary claim or demand at any time arising against the corporation in respect of the undertaking, or for payment of the cost of renewing any part of the works forming part thereof, or for any extension of the said works or otherwise for the benefit of the undertaking." The section also provided that "in the case of the water undertaking and of the gas undertaking respectively, whenever the total receipts from revenue in respect thereof shall exceed the total of the payments and expenses on account of revenue in respect thereof . . . (including any payments to a reserve fund) an amount equivalent to the amount of such excess shall, whenever and so soon as there shall be an amount sufficient for the purpose, be applied to the reduction of water rents for domestic purposes or of the gas charges." In 1934, the finance and general purposes committee resolved that in view of the widespread unemployment in the borough they should sanction the expenditure of £20,000 "for the carrying out of necessary works in connection with the making, repair and maintenance of the roads and sewers with the object of providing work for the unemployed." The committees of the four trading undertakings (including the gas, water and passenger transport undertakings) agreed to the recommendation, the committee of the transport undertaking recommending that in carrying out the works regard should be had to the need for repair of the roads used by their vehicles, so as to assist in effecting economies in the cost of repairing rolling stock. £5,000 was transferred from the reserve account of each undertaking and credited to the account of the surveyors and buildings committee. The sums were expended as proposed, about £3,000 being used in respect of the repair of roads used by vehicles belonging to the passenger transport undertaking. The Attorney-General at the relation of several other local councils in whose areas the defendant corporation supplied gas, water and transport, sought a declaration that the defendants had acted *ultra vires*.

BENNETT, J., in giving judgment, said that by virtue of s. 10 (1) of the Rating and Valuation Act, 1925, the references to the borough funds in the Oldham Corporation Act were to be construed as references to the general rate fund. His lordship also referred to the Local Government Act, 1933, ss. 185 and 194. The question was whether the defendants could transfer moneys from the statutory reserve funds and use them to provide work for unemployed persons. They could not. Once the money was paid into the reserve fund they could not deal with it otherwise than as specified in s. 311 (1) (*g*) of the Act. This expenditure was not an extraordinary claim against the defendants in respect of their undertakings, nor otherwise for the benefit of the undertakings. As to the works done on the roads used by the transport undertaking's vehicles, there was no evidence as to their nature nor as to the extent to which the vehicles used those streets. Without such evidence it could not be held that the expenditure was part of the works forming part of the transport undertaking or that it was for the benefit of the undertaking. The transfer of these sums was, therefore, *ultra vires*, as also would have been the debiting of them against the reserve funds. The section was not imperative only as regarded the keeping of accounts and not as regarded the application of the revenues. The defendants' argument based on the language of earlier Oldham Corporation Acts was unsound, and no useful purpose was served by contrasting this Act with the repealed provisions of other Acts. Moreover, the imperative provision as to the reduction of water rents and gas charges in s. 311 (1) might be defeated if the defendants were free to charge the revenues of their undertakings with payments to their general rate fund. Further, cl. (*f*) of the sub-section would be meaningless if the defendants could make any payment they pleased in relief of the borough rate out of the revenue of the gas undertaking. The plaintiff succeeded.

COUNSEL: *Radcliffe*, K.C., and *M. Fitzgerald*; *Sir R. Stafford Cripps*, K.C., and *Slack*.

SOLICITORS: *Lees & Co.*; *Sharpe, Pritchard & Co.*, for the Town Clerk, Oldham.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

West Bromwich Building Society *v.* Bullock.

Atkinson, J. 7th April, 1936.

BUILDING SOCIETY—ADVANCES TO MEMBERS BY MEANS OF SHARES REPAYABLE BY INSTALMENTS—MORTGAGE AS SECURITY—COVENANT IN MORTGAGE TO REPAY—SHARES TRANSFERRED TO ASSIGNEE—MORTGAGOR RELEASED FROM LIABILITY AS SHAREHOLDER—ASSIGNEE'S DEFAULT IN PAYING INSTALMENTS—MORTGAGOR'S LIABILITY UNDER COVENANT.

In June, 1929, the defendant borrowed from the plaintiff society £2,200 secured on a mortgage of certain property.

The society made loans only to its members. The advances were made by the issue to a member, on his application, of £10 "advanced shares." The member repaid the shares by monthly instalments with interest. The £2,200 were advanced to the defendant in this way. Proof of membership of the society was a passbook, in which instalments as and when paid were entered. Shares were transferable, and no particular manner of transfer was specified in the society's rules. In December, 1931, the defendant transferred his shares to one, Trow, the defendant's passbook being handed to Trow as assignee with the society's consent, and his name being substituted for the defendant's in the register. On the same day, the defendant conveyed the mortgaged property, subject to the mortgage, to Trow. In the transfer there was a covenant by Trow to discharge liability under the mortgage and to indemnify the defendant. The transfer took place in accordance with r. 60 of the society's rules. The concluding sentence of that rule was: "and the board may grant to the original mortgagor, and at his cost and charges, a release from all future liability in respect" of the shares. The defendant, however, failed to ask the society to release him and they accordingly did not do so. Trow having defaulted in his payments to the society, the property was sold at auction for £1,250, and the society called on the defendant to pay them the balance due.

ATKINSON, J., said that it was clear that the advances made were in respect of shares and that repayment under the society's rules was due from a member on and in respect of his shares. Trow having been accepted as a shareholder in place of the defendant, he (his lordship) thought that the defendant's liability under the rules as a shareholder was then terminated. The question then arose whether the defendant's liability on the mortgage was also terminated. Counsel for the defendant had argued that it was immaterial that the society had not released the defendant; that the indebtedness secured was only the defendant's indebtedness as a member, and that if his indebtedness as a member was at an end a security given to secure that indebtedness was necessarily discharged. The security consisted of a covenant and of a charge upon the specified property. He (his lordship) thought it clear that the charge was not limited to instalments, etc., payable by the mortgagor as a member (which, he had held, the defendant had ceased to be) and so long as he remained a member. The charge, he thought, extended to instalments and other sums payable in respect of the shares, whoever the holder of the shares might be. It was not argued that the acceptance of Trow as a member put an end to the charge on the property. The measure of the charge appeared from the proviso for redemption, which ran: "If the mortgagor shall pay to the society all instalments, etc., and other moneys, which . . . shall . . . become payable in respect of the said shares." There was no word there to indicate that the charge was limited to instalments due under the rules by the mortgagor. It, in terms, secured "payments due in respect of the said shares," and, he (his lordship) thought, that meant irrespectively of who might be a shareholder at a particular time. It was equally clear that the covenant was not so limited, being one by the defendant to repay the money advanced to him, and also such other subscriptions and payments as might become payable in respect of the shares, whoever the shareholder might be. The covenant related to the money advanced, and remained effective notwithstanding that the defendant ceased to be a member of the society. In *Ingledew and Others* v. *Temple* (1881), 70 L.T.J. 263, the facts appeared to be exactly like those in this case, but the defendant had been held to be released. The report of that case did not indicate the exact wording of the covenant, but it did not appear that the covenant had extended to the money advanced itself. In the present case there were two branches of the action, first the covenant to repay the £2,200 advanced, then the covenant to pay subscriptions. No mention of the former covenant appeared in the report of *Ingledew's Case, supra*, and he (his lordship) could accordingly not regard it as binding him. There must therefore be judgment for the plaintiffs.

COUNSEL: *A. J. Long*, for the plaintiffs; *R. A. Willes*, for the defendant.

SOLICITORS: *T. D. Jones & Co.*, agents for *Lyon, Clark & Co.*, West Bromwich; *Ward, Bowie & Co.*, agents for *James F. Addison & Cooper*, Walsall.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Finney *v.* Mayor, etc., of Birkenhead.

Lord Hewart, C.J., du Parcq and Singleton, JJ.
26th May, 1936.

LOCAL GOVERNMENT—PREMISES ABUTTING ON FOOTWAY—OWNER REQUIRED BY NOTICE TO MAKE AND FLAG FOOTWAY—DEFAULT—WORK CARRIED OUT BY LOCAL AUTHORITY—ASPHALT LAID DOWN—RIGHT OF AUTHORITY TO RECOVER—BIRKENHEAD CORPORATION ACT, 1881 (44 & 45 Vict., c. cliii), s. 30—PUBLIC HEALTH ACT, 1875 (38 & 39 Vict., c. 55), s. 150.

Case stated by Birkenhead justices.

The appellant was the owner of premises abutting on an unmade footway in a road in Birkenhead. By s. 30 of the Birkenhead Corporation Act, 1881, the corporation were empowered, after giving notice as provided by s. 150 of the Public Health Act, 1875, to "make, curb, flag and complete" the footway, recovering from the owners half the cost of the work if the road was repairable by the inhabitants at large, and the whole cost if it was not. In September, 1934, the statutory notice was given to the appellant to make, flag and complete that part of the footway on which his premises abutted. He failed to do so, whereupon the corporation carried out the work. They did not, however, flag the footway, but laid down an asphalt surface instead. The corporation then sought to recover from the appellant an apportionment of the whole cost of the work. The appellant having disputed his liability to pay the sum claimed by the corporation, they took proceedings before the justices, who decided that the road in question was not one repairable by the inhabitants at large and accordingly ordered the appellant to pay the whole of the apportioned cost.

LORD HEWART, C.J., said that it was in his opinion clear on the evidence that the road was repairable by the inhabitants at large. The appellant having succeeded on that point, the question was whether the corporation had complied with the provisions of s. 30 of the Birkenhead Corporation Act, 1881, whereby they were to make, curb, flag and complete the footway. That section clearly provided that, before the corporation could act, it must give notice in accordance with the Public Health Act, 1875, to the owners of premises abutting on to the footway. The notice was to the owners to make, curb, flag and complete. If the owner then defaulted, the corporation might execute the work and recover from the owners "one-half of the costs of so making, curbing, flagging and completing" the footway. He (his lordship) attached great importance to the word "so." Section 50 of the Act of 1881 did not provide that the local authority could give notice for one kind of work and then proceed, on default by the owner, itself to carry out another kind. The notice must be one which fulfilled the terms of the section and which in other respects complied with s. 150 of the Public Health Act, 1875. That section, as was natural, required the greatest particularity where individuals were being required by a local authority to carry out work which the authority would, if those individuals made default, carry out at their expense. The notice in this case had been to make, curb, flag and complete and stated that on failure to comply the corporation would proceed to make, curb, flag and complete the footway. The work which the corporation did

was not in pursuance of that notice, because in fact they laid down asphalt. In *Acton Local Board* v. *Lewsey* (1886), 11 App. Cas. 93, Lord Halsbury, at p. 95, said: "It would . . . be an abuse of the power so conferred, if the local board did not procure the work (and it must, of course, be substantially the same work) to be done as cheaply as possible." It could not be argued that, a man having been ordered to flag a footway, it was "substantially the same work" if the local authority then proceeded to lay down asphalt. In *Kershaw* v. *Sheffield Corporation* (1887), 51 J.P. 759, an owner of land adjoining a street was notified that he must lay an 18-inch sewer pipe. He neglected the work and the local authority carried it out. Finding that a 12-inch pipe was sufficient and cheaper, they laid that instead of an 18-inch pipe. It was held that they were entitled to recover the apportionment expenses because the alteration which they had made was merely in a matter of detail. That could not be said of what the respondents had done in the present case, where one kind of making up being required, another kind had been carried out. The appeal must be allowed.

DU PARCQ and SINGLETON, JJ., agreed.

COUNSEL: *M. FitzGerald*, for the appellant; *Maxwell Fyfe*, K.C., and *R. Etherton*, for the respondents.

SOLICITORS: *Layton & Co.*; *E. W. Tame*, Town Clerk, Birkenhead.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Dryden *v.* Surrey County Council and Stewart.

Finlay, J. 29th May, 1936.

NEGLIGENCE—HOSPITAL PATIENT—LIABILITY OF HOSPITAL AUTHORITIES FOR NEGLIGENCE (IF ANY) OF NURSES EMPLOYED BY THEM—TWO DEFENDANTS—DIFFERENT ALLEGATIONS AGAINST EACH—RIGHT OF EACH TO CROSS-EXAMINE WITNESSES OF THE OTHER.

Action for damages for negligence and breach of duty.

The plaintiff was a patient in a hospital belonging to the defendant council. While she was there, an operation was performed on her by the defendant Stewart. Nine days later the plaintiff's own doctor extracted from her body some surgical gauze. She accordingly brought this action against the council because she alleged a failure to nurse her properly, and against Stewart for alleged negligence in leaving the gauze plugging within her body after the operation.

FINLAY, J., said that he would first dispose of a point which had arisen at the trial, although it had turned out to be quite unimportant in the result. Counsel for the defendant doctor having put leading questions to witnesses called for the first defendants, counsel for the plaintiffs had objected, and he (his lordship) had overruled the objection. The causes of action against the respective defendants were quite distinct, and arose to a substantial extent out of different facts. It had seemed to him (his lordship) that counsel for the one defendant was at liberty to cross-examine witnesses for the other on the simple ground that they were not his witnesses. The law with regard to the defendant council's liability (if the nurses employed by them were guilty of negligence) was contended in a long series of decisions, for instance, *Evans* v. *Mayor, etc., of Liverpool* [1906] 1 K.B. 160; *Hillyer* v. *Governors of St. Bartholomew's Hospital* [1909] 2 K.B. 820, particularly the judgment of Kennedy, L.J., at p. 829; and *Lavelle* v. *Glasgow Royal Infirmary* [1932] S.C. 245. In that case no negligence having been found, the opinions expressed were *obiter*. The contrasting views of the matter which might be taken could, however, be seen if the judgments of the majority and the dissenting judgment of Lord Alness were read. *James* v. *Probyn* (*The Times*, 28th May, 1935), had been followed by Horridge, J., in *Strangways-Lesmere* v. *Clayton* (1936), 80 SOL. J. 306; 52 T.L.R. 374. He (his lordship) took the law as it had been stated by Horridge, J., quoting Swift, J., in the last-mentioned case. Horridge, J., had there said that, although a hospital contracted with its patients to engage competent doctors and nurses, he did not think that a hospital undertook in any way to be responsible for the way in which the doctors or the nurses performed their duties. He (his lordship) was accordingly bound to hold that, even if negligence were proved against the nurses, the defendant council could not be held responsible for that negligence. He was unable, however, to find that the nurses had been negligent. With regard to the defendant doctor, he (his lordship) was of opinion that the plaintiff was entitled to damages for negligence against him. He would award her £250 with costs. There would be judgment for the defendant council with costs. He (his lordship) did not think that the plaintiff should be at liberty to recover against the defendant doctor the costs which she was liable to pay to the county council. He (his lordship) had to remember that, on allegations of negligence entirely different from those made against the doctor, the plaintiff had brought against the council an action in which she had failed both on the facts and in law. He (his lordship) was therefore of opinion that it would be unjust for him to order the doctor to pay the council's costs when those costs related to issues different from those in which he was interested, and raised points which did not arise in his case. He knew of no authority to justify his making such an order, and he thought that *Bullock* v. *London General Omnibus Co.* [1907] 1 K.B. 264, had no application.

COUNSEL: *Beyfus*, K.C., and *H. G. Robertson*, for the plaintiff; *Edgar Dale* and *John Russell*, for the county council; *Carthew*, K.C., and *A. A. Pereira*, for the defendant doctor.

SOLICITORS: *R. H. Behrend & Co.*; *Carpenters*; *Le Brasseur & Oakley*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

W. *v.* W.

Bucknill, J. 16th and 26th June, 1936.

DIVORCE—DECREE *Nisi* ON WIFE'S PETITION—INTERVENTION BY WOMAN NAMED AS MEMBER OF PUBLIC—COMPETENCY—RESPONDENT HUSBAND'S SUMMONS TO STRIKE OUT—WOMAN NAMED NOT A PARTY—MATRIMONIAL CAUSES ACT, 1857 (20 & 21 VICT., C. 85), S. 28—MATRIMONIAL CAUSES ACT, 1860 (23 & 24 VICT., C. 144), S. 7—MATRIMONIAL CAUSES ACT, 1907 (7 EDW. 7, C. 12), S. 3—JUDICATURE (CONSOLIDATION) ACT, 1925 (15 & 16 GEO. 5, C. 49), S. 183 (2), S. 177 (2), S. 197—DIVORCE RULES 17, 18, 19.

This was the respondent husband's summons to strike out an appearance entered by the woman named in the suit as a member of the public to show cause why the decree *nisi* pronounced in the suit on 27th June, 1935, should not be made absolute. The woman in question, A.B., had filed an affidavit swearing that she had agreed with the husband to furnish the evidence for divorce, but that although the husband and she had stayed together at the Charing Cross Hotel no adultery had in fact been committed. The only point for the consideration of the Court on the summons to strike out was whether a woman named, having been served with the petition in the usual way, was thereby constituted a party to the suit so as to preclude her from coming within the description of "any person" as used in s. 183, sub-s. (2) of the Judicature Act, 1925, which provides that "before the decree is made absolute, any person may . . . show cause why the decree should not be made absolute by reason of the decree having been obtained by collusion . . ."

BUCKNILL, J., in the course of delivering a considered judgment, said that the question was whether a woman named in a petition for dissolution as having committed adultery with the respondent husband came within the category

of "any person" within the meaning of s. 183, sub-s. (2), of the Judicature Act, 1925. It seemed to him that the burden of satisfying the court, that "any person" did not include the woman named, was upon the husband. There was authority that "any person" meant anybody except a respondent or co-respondent, being parties to the proceedings. *Stoate* v. *Stoate* (1861), 2 Sw. & Tr. 384; *Howarth* v. *Howarth* (1884), 9 P.D. 218; *Haines* v. *Haines* (1901), 86 L.T. 262. Was the woman named a party to the suit? Under s. 28 of the Matrimonial Causes Act, 1857, the court had been able to direct that the woman named be made a respondent, and under s. 3 of the Matrimonial Causes Act, 1907, the court could give leave to any person charged with having committed adultery with a party to the suit to intervene. Those matters were now governed by ss. 177 and 197 of the Judicature Act, 1925, and rr. 17, 18 and 19 of the Divorce Rules. He (his lordship) did not think that the mere service upon the woman named made her a party to the suit. Before that could happen she must either have applied for leave to intervene under s. 197 or have been made a respondent under s. 177. If proceedings for divorce were a personal matter between the parties alone it would be unjust and contrary to public policy, which required that litigation should not be unduly prolonged, that a woman in the position of the intervener in the present case should be allowed to intervene after the hearing. Her opportunity to apply for leave to intervene arose as soon as the petition was brought to her notice, and she should have acted then. But the public interest was involved in proceedings for divorce and particularly to see that a decree should not be obtained by manufactured evidence. The Matrimonial Causes Act, 1860, as Lord Westbury pointed out in *Lautour* v. *Her Majesty's Proctor* (1864), 10 H.L. Cas. at p. 699, was passed with the object of giving to the whole of the public as well as to the Queen's Proctor the power to give information to the court in the interval between decree *nisi* and decree absolute. And since the passing of that Act, he (his lordship, Bucknill, J.) thought that a woman named would be entitled to intervene after decree *nisi*. If she obtained leave to intervene on the ordinary footing then her right under s. 183 would disappear in accordance with the decisions above referred to because she would then have become a party to the suit. For the above reasons the summons would be dismissed.

COUNSEL: *Noel Middleton*, K.C. (*Clifford Mortimer* with him) for the husband; *Walter Frampton* (with him *J. F. Compton-Miller*) for the wife.

S. Parnell Kerr, for the intervener, the woman named.

SOLICITORS: *J. B. de Fonblanque*; *Braikenridge & Edwards*; *Piper, Smith & Piper*.

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Dear *v.* Dear and Clark.

Langton, J. 9th July, 1936.

PLEADINGS—DIVORCE—PRACTICE—ISSUE OF LEGITIMACY—TRIAL OF ISSUE AT SAME TIME AS MAIN SUIT.

This was the husband's petition for dissolution on the ground of the wife's adultery with the co-respondent Frederick William Clark. The parties were married in 1928 and the petitioner alleged in the petition that there was one child of the marriage, a daughter, born in 1929. Subsequently, the President gave the petitioner leave to amend his petition to include reference to a second child, born to the respondent in 1930, and at the same time allowed the respondent to file an answer limited to that amendment. The petition, as amended, alleged that the paternity of the second child was in dispute. In her answer, the respondent admitted that she had co-habited with the co-respondent since 1935, but alleged that both her children were issue of the marriage. In argument the question was raised (though subsequently not adjudicated upon) as to whether, admitting the rule in legitimacy proceedings was that neither spouse could give evidence of non-access, one spouse could give evidence of access, when the other was debarred from denying it.

LANGTON, J., in giving judgment, said that the case was an unusual one by reason of the fact that the President had directed the trial of an unusual issue, namely, the legitimacy of the second child of the marriage, born in July 1930. The President gave leave that the matter be raised and an answer filed in order that that matter should be determined at the same time as the petition was heard. That issue might have given rise to a very difficult and debatable point as to what extent, if at all, either or both of the spouses could give evidence of access which would be material to the birth and legitimacy of the child, but in the particular circumstances it was quite simple to deal with the issue without going into or determining that large and possibly very debatable point, about which full argument would have been required. The court was satisfied that the petitioner was the father of the second child, which had been registered by the wife in the petitioner's name. In the course of the trial no allegation had been made against the chastity of the wife in respect of the birth of the second child. A declaration of legitimacy would therefore be made.

The petitioner was granted a decree *nisi* of divorce, with costs against the co-respondent.

COUNSEL: *William Latey*, for the petitioner; *Hon. Victor Russell*, for the respondents.

SOLICITORS: *Baker, Robinson and Spink*; *Wontner and Sons*.

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.

Jackson *v.* Jackson and Barwell.

Bucknill, J. 24th July, 1936.

DIVORCE—PETITION BROUGHT UNDER POOR PERSONS' RULES—AWARD OF DAMAGES AND COSTS AGAINST CO-RESPONDENT—APPLICATION FOR PROFIT COSTS—FINANCIAL ABILITY OF CO-RESPONDENT NOT A "SPECIAL CIRCUMSTANCE"—R.S.C., Ord. XVI, r. 31B (2), (3), (5).

On 26th June, 1936, the husband petitioner, suing under the Poor Persons' Rules, obtained a decree *nisi* of dissolution of his marriage and was awarded £200 damages against the co-respondent. The petitioner now asked for an order for profit costs on the ground that the superior means of the co-respondent justified such an order being a "special circumstance" within the meaning of Ord. XVI, r. 31B (2), which came into operation on 1st January, 1935, and is as follows: "Where it appears to the court or a judge that any other party has acted unreasonably in bringing or defending the proceedings or in his conduct of them, or that the special circumstances require it, the court or judge may order the other party to pay the costs of the poor person, including profit costs, or a proportion of profit costs, or a sum of money in respect thereof in addition to out-of-pocket expenses properly incurred in the course of the proceedings, but not fees to counsel or court fees." By r. 31B (3): "Where it appears to the court or a judge that the proceedings are of such length or difficulty as to throw an unusual burden on the solicitor acting for the poor person, the court or judge may order the other party to pay, in addition to the out-of-pocket expenses properly incurred in the course of the proceedings, such sum as the court or judge thinks fit in respect of such unusual burden."

BUCKNILL, J., in the course of delivering a considered judgment, said that it had been argued that the fact that the co-respondent had some means constituted special circumstances which required him (his lordship) to make an order that the petitioner should have profit costs, and that it would be unjust to the petitioner's solicitor if in such a case he was to have no financial remuneration for his work, and that that view had been judicially recognised in *Gribble* v. *Gribble*

(1929), 45 T.L.R. 192, where profit costs had been granted by Bateson, J., apparently on the ground that the husband left his wife and went off to New Zealand with another woman. His lordship referred to *Lawrence* v. *Lawrence* and *Davis* v. *Davis*, reported in *The Times* on 17th April, 1929, and 11th March, 1933, respectively, in which Lord Merrivale and Bateson, J., made observations as to circumstances in which it would have been proper to order profit costs in poor persons' cases. Those cases, his lordship continued, were decided under rules which preceded the rule now in force. It was clear from the report of the Poor Persons' Procedure Committee dated 30th July, 1934, on which the present rule was based, that the framers of the rule had been largely concerned with the question whether, and if so when, profit costs ought to be paid by an unsuccessful party to a suit brought by a poor person. Rule 31B (2) and (3) specified three grounds, viz., unreasonable defence or conduct, proceedings of unusual length or difficulty, and "special circumstances." If the framers of the rules wished to include as a ground for ordinary profit costs the fact that the co-respondent had sufficient means to pay them, the rules could and would have said so. The only reference to the means of the other party as a material factor on the question of costs was r. 31B (5), which stated that, where an order was made to pay profit costs, the order should not be enforced without the leave of the court, and the court might refuse leave if satisfied by the party ordered to pay them that he had not the means to pay them. In other words, consideration of the question as to means seemed to be postponed until the time came for enforcement of the order. The fact that the co-respondent had some means could hardly be said to constitute "special circumstances" which required a special order for profit costs. Order XVI, r. 31, enabled the judge to order to be paid to the solicitor out of any money recovered by the poor person a sum in respect of costs not exceeding one-fourth of the amount recovered after deduction of all proper disbursements made by the solicitor. The old rule as to costs in the Divorce Court, where the petitioner sued *in formâ pauperis*, followed the rule of the common law and did not allow a petitioner to receive any profit costs from a co-respondent; see *Richardson* v. *Richardson and Plowman* [1895] P. 346. The basis of the common law rule, as explained in *Carson* v. *Pickersgill* (1884), 14 Q.B.D. 859, by Lord Esher, M.R., was that, in ordinary cases, where the plaintiff succeeded, the defendant was bound to pay the reasonable costs of the plaintiff, but in a case where the pauper plaintiff was not liable to pay costs, the plaintiff was not allowed to make a gift out of his pocket to the lawyers who had been engaged on his behalf, in the form of a gratuitous payment of fees to them, and then to demand reimbursement of those sums from the defendant. In the present case the only possible ground for profit costs was that the co-respondent had means to pay, and that therefore justice required that the poor person's solicitor should receive some remuneration for his voluntary and honourable services. He (his lordship) did not think such a ground was a special circumstance requiring profit costs to be ordered. He therefore condemned the co-respondent in the petitioner's costs, but made no special order as to costs.

COUNSEL: *A. Richard Ellis*, for the petitioner; *Theodore Turner*, for the co-respondent.

SOLICITORS: *Milner & Bickford; H. N. & E. H. Philcox.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

[For Table of Cases previously reported in current volume see page iii of Advertisements.]

Mr. William Welchman, solicitor, late senior partner of Welchman, Dewing and Wace, of Wisbech, Upwell and Downham Market, left £46,077, with net personalty £42,404. He left £50 to Wisbech Museum and £100 to the Solicitors' Benevolent Association.

Obituary.

SIR RONALD ALLEN.

Sir Ronald Wilberforce Allen, solicitor, senior partner in the firm of Messrs. Wilberforce Allen & Bryant, of Strand, W.C., and Ludgate House, E.C., died on Monday, 10th August, at Balcomie Beach, Fife, at the age of forty-six. Sir Ronald was educated at Scarborough and the University of London, and was admitted a solicitor in 1913. He served on the St. Albans City Council, and in 1923 he was elected Liberal M.P. for South Leicester, but was defeated in 1924. He received the honour of knighthood in 1932. He was a Methodist lay preacher, and the treasurer of the Temperance Council of Christian Churches.

MR. J. F. EALES, K.C.

Mr. John Frederick Eales, K.C., Recorder of Nottingham, of Brick-court, Temple, died at Whitby on Thursday, 6th August, at the age of fifty-five. Mr. Eales, who served his articles with a solicitor at Luton, was admitted a solicitor in 1904, and in 1905 he became a partner in a firm at Coventry. Five years later he was called to the Bar by the Middle Temple and went the Midland Circuit. He was appointed Recorder of Coventry in 1928 and Recorder of Nottingham in 1934. He took silk in 1929. In 1931 he was elected Conservative M.P. for the Erdington Division of Birmingham, and he was re-elected at the last General Election. Mr. Eales was a Master of the Bench of the Middle Temple.

MR. J. G. FISHWICK.

Mr. John Gouldie Fishwick, solicitor, head of the firm of Messrs. McKenna & Fishwick, of Liverpool, died on Tuesday, 4th August, at the age of fifty-two. Mr. Fishwick was educated at Ampleforth College, and served his articles with Messrs. Layton, Son & Calder, of Liverpool. He was admitted in 1906, and became a partner in the firm. Later he entered into partnership with the late Mr. J. P. McKenna.

MR. W. S. HANNAM.

Mr. William Simpson Hannam, solicitor, senior partner in the firm of Messrs. North & Sons, of Leeds, died recently at the age of eighty-one. Mr. Hannam was admitted a solicitor in 1876. He was a Bachelor of Music of London University.

MR. A. P. JAMES.

Mr. Arthur Perkins James, solicitor, of Cardiff, died in a nursing home on Friday, 31st July, at the age of seventy-nine. He was educated at Christ's College, Brecon, Clifton College, and Geneva University, and was admitted a solicitor in 1881. Mr. James was a prominent member of the Territorial Army and retired with the rank of colonel. He had been a Deputy-Lieutenant for Glamorgan since 1915.

MR. F. W. SIMMONDS.

Mr. Frank William Simmonds, solicitor, senior partner in the firm of Messrs. Frank Simmonds & Son, of Salisbury House, E.C., and Bromley, Kent, died on Friday, 7th August. Mr. Simmonds was admitted a solicitor in 1895.

MR. G. G. THOMPSON.

Mr. George Gilbert Thompson, solicitor, a partner in the firm of Messrs. Mumfords & Gordons, of Bradford, died on Wednesday, 15th July, at the age of seventy-four. Mr. Thompson was admitted a solicitor in 1886. He was appointed Clerk to the Worsted Committee in 1922, and was a past president of the Bradford Law Society.

MR. D. E. WILLIAMS.

Mr. David Emrys Williams, B.A. (Lond.), solicitor, senior partner in the firm of Messrs. D. Emrys Williams & Co., of Aberystwyth, died on Sunday, 26th July, at the age of fifty-three. Mr. Williams served his articles with the late Mr. John

Evans, a former Town Clerk of Aberystwyth, and was admitted a solicitor in 1911. He had been deputy coroner for North Cardiganshire and deputy magistrates' clerk at Aberystwyth.

Rules and Orders.

FORMS FOR USE IN DISTRICT REGISTRIES, APPROVED BY THE LORD CHANCELLOR, JULY 13, 1936, IN ACCORDANCE WITH RULE 33 OF ORDER LXI OF THE RULES OF THE SUPREME COURT.

Whereas by virtue of the Law Reform (Married Women and Tortfeasors) Act, 1935, the form of judgment against a married woman is, except in special cases, the same as the form of judgment against a feme-sole;

And whereas for the purpose of all such special cases the Masters have, in pursuance of Rule 33 of Order LXI of the Rules of the Supreme Court and subject to the approval of the Lord Chancellor, prescribed the use in and for the purposes of the District Registries of the Forms set out in the Schedule to this Order (being Forms numbered D.1b., F.1b. and H.7b. in Appendix A modified as they have deemed expedient) with such variations as circumstances may require;

Now therefore, I, Douglas McGarel Viscount Hailsham, Lord High Chancellor of Great Britain hereby in pursuance of the said Rule approve the use of the said Forms in and for the purposes of the District Registries.

Dated the 13th day of July, 1936.

Hailsham, C.

Judgment against Married Woman.

D.1b.

In the High Court of Justice.

Division 19 , , No. .
District Registry

Between

Plaintiff,

and

Defendant.

([1]) Dated and entered the day of , 19 .

([2])

THEREFORE IT IS ADJUDGED that the Plaintiff recover against the Defendant £ : :
and Costs.([3])
but such sum [and Costs]*
(so far as regards the Defendant ([4])
) shall not be payable out of any property of the said Defendant to the enjoyment of which there is attached any enforceable † restriction against anticipation.

The above costs have been taxed and allowed at £ as appears by a Taxing Officer's Certificate dated the day of 19 .

Plaintiff's Solicitor.

Writ—Fieri Facias against a Married Woman.

F.1b.

In the High Court of Justice.

Division. 19 , , No. .
District Registry.

Between

Plaintiff,

and

Defendant.

EDWARD THE EIGHTH, by the Grace of God, of Great Britain, Ireland, and the British Dominions beyond the Seas, King, Defender of the Faith, To the Sheriff of
Greeting.

WE COMMAND YOU that of the goods and chattels of ([5])

and so far as regards ([6])
in your bailiwick (subject as hereinafter mentioned) you cause to be made the sum of £ and £
costs and also interest thereon, at the rate of £
per centum per annum from the ([7]) day of ,
19 , which said sums of money and interest were lately before Us, in Our High Court of Justice, in a certain ([8])

wherein plaintiff
and defendant,
by a Judgment of Our said Court, bearing date the day of 19 , adjudged to be paid by the said to and as far as regards ([6])
([9]) such sum [and costs] shall not be payable out of any property of the said defendant to the enjoyment of which there is attached any enforceable restriction against anticipation, and that you have that money and interest before Us in Our said Court immediately after the execution hereof to be paid to the said
in pursuance of the said Judgment: and in what manner you shall have executed this Our Writ, make appear to us in Our said Court immediately after the execution thereof: and have there then this Writ.

WITNESS,

, Lord High Chancellor of Great Britain, the day of in the year of Our Lord One thousand nine hundred and

INDORSEMENT.

LEVY against
([10]) [and as far as regards
out of her property,] £ and £ for costs of execution, &c., and also interest on £ at £4 per centum per annum, from the day of ,
19 , until payment, besides sheriff's poundage, officer's fees, costs of levying, and all other legal incidental expenses.

THIS WRIT was issued by
of
agent for of
solicitor for the who reside at
The defendant is a
and resides at
in your bailiwick.

Order under Order XIV.—Married Woman.

H.7b.

In the High Court of Justice.

KING'S BENCH DIVISION. 19 , , No. .
District Registry.

BETWEEN

Plaintiff,

and

Defendant.

UPON hearing the Solicitors for the plaintiff and defendant and reading the affidavit of

It is ordered that the plaintiff be at liberty to sign final judgment in this action against the defendant
for the amount endorsed on the writ, with interest (if any) and costs, and that [as regards the defendant ([11])
] such sum [and costs‡] shall not be payable out of any property of the said Defendant to the enjoyment of which there is attached any enforceable§ restriction against anticipation.

Dated the day of , 19 .

(1) If after trial or pursuant to order, insert date of order or direction for judgment.
(2) Recital of Default, order or direction for judgment.
(3) If fixed costs insert amount. If taxed insert "to be taxed."
(4) Name of married woman. If against married woman only strike out words in round brackets.
(5) Name of defendants.
(6) Name of married woman. If against married woman only, strike out "and so far as regards."
(7) Day of the judgment or order, or day from which money directed to be paid, or day from which interest is directed by the order to run, or as the case may be.
* The words in brackets should be omitted when an order is made under Sec. 2 of the Married Women's Property Act, 1893 (56 & 57 Vict. c. 63).
† See Sec. 19 of the Married Women's Property Act, 1882, and Sec. 2 of the Law Reform (Married Women and Tortfeasors) Act, 1935 (25 & 26 Geo. 5, c. 30).

(8) Action or matter there depending, intituled "In the matter of, &c." or as the case may be.
(9) These words must agree with the terms of the judgment.
(10) Strike out words in brackets if not applicable.
(11) Name of married woman. If against married woman only, strike out words in brackets.
‡ The words in brackets should be omitted when an order is made under sec. 2 of the Married Women s Property Act, 1893.
§ See sec. 19 of the Married Women's Property Act, 1882, and sec. 2 of the Law Reform (Married Women and Tortfeasors) Act, 1935.

THE HOUSING ACTS (FORM OF ORDERS AND NOTICES) REGULATIONS, 1936, dated July 23, 1936, made by the Minister of Health under section 57 of the Housing Act, 1930 (20 & 21 Geo. 5. c. 39). [S.R. & O. 1936, No. 739. Price 1s. 5d.]

THE HOUSING ACTS (EXTINGUISHMENT OF PUBLIC RIGHT OF WAY) REGULATIONS, 1936, dated July 23, 1936, made by the Minister of Health under the Housing Acts, 1925 to 1935. [S.R. & O. 1936, No. 740. Price 1d.]

THE HOUSING ACTS (EQUALISATION ACCOUNT) REGULATIONS, 1936, dated July 23, 1936, made by the Minister of Health under section 57 of the Housing Act, 1930 (20 & 21 Geo. 5. c. 39), and section 46 (1) of the Housing Act, 1935 (25 & 26 Geo. 5. c. 40). [S.R. & O. 1936, No. 741. Price 1d.]

THE HOUSING ACTS (OVERCROWDING AND MISCELLANEOUS FORMS) REGULATIONS, 1936, dated July 25, 1936, made by the Minister of Health under the Housing Acts, 1925 to 1935. [S.R. & O. 1936, No. 765. Price 2d.]

Societies.

Society of Comparative Legislation.

The Rt. Hon. S. M. Bruce, C.H., M.C., High Commissioner for Australia, has accepted the invitation of the Committee of the Society of Comparative Legislation, to become President in succession to the late Lord Reading. The Rt. Hon. T. M. Cooper, K.C., M.P., Lord Advocate, Mr. Clement Davies, K.C., M.P., Herr Abr. Frowein, President of the German National Committee of the International Chamber of Commerce, The Hon. Vincent Massey, High Commissioner for Canada, The Hon. Newton Rowell, K.C., Sir John Houldsworth Shaw, Solicitor to the Inland Revenue, and The Hon. Mr. Justice Fabre, Surveyor of the Supreme Court, Quebec, have been elected members of the Council.

Legal Notes and News.

Honours and Appointments.

The Colonial Office announces the following appointments in the Colonial Legal Service :—

Mr. E. A. COLLYMORE (Attorney-General) appointed Chief Justice, Barbados.

Mr. L. C. DALTON (Puisne Justice, Ceylon), appointed Chief Justice, Tanganyika.

Mr. MOSES THOMAS, J.P., who was town clerk of Port Talbot for twenty-one years until his retirement recently, has been made an honorary freeman of the borough. Mr. Thomas was admitted a solicitor in 1895.

Mr. C. W. G. T. KIRK, LL.B., Clerk and Solicitor, Farnborough U.D.C., has been appointed Deputy Town Clerk of Acton. Mr. Kirk was admitted a solicitor in 1931.

Notes.

Mr. E. Edward Bird, chairman of the Legal and General Assurance Society, has been elected a director of Williams Deacon's Bank.

A portrait of the late Lord Darling, who was a native of Colchester, has been presented to the borough, and will be hung in the Town Hall.

Mr. Laurence Rivers Dunne, the recently-appointed Metropolitan Police magistrate, sat for the first time at the Westminster Police Court last Wednesday.

It is understood that Mr. Harold McKenna, the Marylebone Police Court magistrate, is to be transferred to Bow-street Police Court at the end of the summer vacation period.

The Minister of Health, Sir Kingsley Wood, has appointed Miss E. L. Alden and Miss M. J. Morris to be Women Inspectors ; Miss Alden for service in England, and Miss Morris for service on the staff of the Welsh Board of Health.

Wills and Bequests.

Sir John Lithiby, of Porchester Square, W.2, late legal adviser to the Local Government Board, left £8,310, with net personalty £8,224.

Mr. John Frederick Walter Wheeler, solicitor, of Oxted, left £66,575, with net personalty £52,071.

Mr. Joseph Patrick McKenna, solicitor, of Birkenhead and Liverpool, left £39,207, with net personalty £38,618.

Mr. Ernest Albert Scanes, solicitor, of West Kensington, left £24,301, with net personalty £23,771.

Mr. Maurice Edward Turner, solicitor, of Leadenhall-street and Overton, Hants, left £40,515, with net personalty £34,431.

Mr. Richard Woollcombe, retired solicitor, of Wokingham, left £38,778, with net personalty £34,642.

Mr. Frederick Harold Edwards, solicitor, of Hampstead, left £25,600, with net personalty £705.

Mr. Rupert Arthur Llewellyn, solicitor, of Bexhill-on-Sea, let £43,773, with net personalty £21,764.

Mr. Edward Augustus Salmon, retired solicitor, of Dawlish, left £38,943, with net personalty £36,822.

Mr. Joseph Walker Tyacke, solicitor, of Helston, left £20,312, with net personalty £16,505.

Colonel Charles Hodgkinson, solicitor, of Penistone, Yorks, left £11,388, with net personalty £9,638.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 27th August, 1936.

	Div. Months.	Middle Price 12 Aug. 1936.	Flat Interest Yield.			‡Approximate Yield with redemption		
			£	s.	d.	£	s.	d.
ENGLISH GOVERNMENT SECURITIES								
Consols 4% 1957 or after	FA	114½	3	9	10	3	0	5
Consols 2½%	JAJO	85	2	18	10	—		
War Loan 3½% 1952 or after	JD	106½	3	5	9	2	19	7
Funding 4% Loan 1960-90	MN	117¾	3	7	11	2	19	1
Funding 3% Loan 1959-69	AO	103⅜	2	18	0	2	16	0
Funding 2½% Loan 1956-61	AO	93½	2	13	6	2	17	5
Victory 4% Loan Av. life 23 years	MS	116½	3	8	8	2	19	11
Conversion 5% Loan 1944-64	MN	118¾	4	4	2	2	1	9
Conversion 4½% Loan 1940-44	JJ	109½	4	2	2	2	9	2
Conversion 3½% Loan 1961 or after	AO	108	3	4	10	3	0	9
Conversion 3% Loan 1948-53	MS	103¼	2	18	1	2	13	7
Conversion 2½% Loan 1944-49	AO	101½	2	9	3	2	5	6
Local Loans 3% Stock 1912 or after	JAJO	96½	3	2	2	—		
Bank Stock	AO	378	3	3	6	—		
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	87½	3	2	10	—		
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	96	3	2	6	—		
India 4½% 1950-55	MN	116½	3	17	3	3	0	9
India 3½% 1931 or after	JAJO	99½	3	10	4	—		
India 3% 1948 or after	JAJO	87¼	3	8	9	—		
Sudan 4½% 1939-73 Av. life 27 years	FA	118	3	16	3	3	9	3
Sudan 4% 1974 Red. in part after 1950	MN	116	3	9	0	2	12	4
Tanganyika 4% Guaranteed 1951-71	FA	113½	3	10	6	2	16	5
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	109	4	2	7	2	14	0
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	96	2	12	1	2	15	6
COLONIAL SECURITIES								
Australia (Commonw'th) 4% 1955-70	JJ	109	3	13	5	3	7	0
*Australia (C'mm'nw'th) 3¾% 1948-53	JD	104	3	12	2	3	6	9
Canada 4% 1953-58	MS	110½	3	12	5	3	3	9
*Natal 3% 1929-49	JJ	101	2	19	5	—		
*New South Wales 3½% 1930-50	JJ	101	3	9	4	—		
*New Zealand 3% 1945	AO	100½	2	19	8	2	18	8
Nigeria 4% 1963	AO	114	3	10	2	3	4	4
*Queensland 3½% 1950-70	JJ	101	3	9	4	3	8	0
South Africa 3½% 1953-73	JD	107	3	5	5	2	19	5
*Victoria 3½% 1929-49	AO	102	3	8	8	—		
CORPORATION STOCKS								
Birmingham 3% 1947 or after	JJ	98	3	1	3	—		
*Croydon 3% 1940-60	AO	100	3	0	0	3	0	0
Essex County 3½% 1952-72	JD	106½	3	5	9	2	19	8
Leeds 3% 1927 or after	JJ	95	3	3	2	—		
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	106	3	6	0	—		
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	79½	3	2	11	—		
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	95	3	3	2	—		
Manchester 3% 1941 or after	FA	96	3	2	6	—		
*Metropolitan Consd. 2½% 1920-49	MJSD	100½	2	9	9	—		
Metropolitan Water Board 3% "A" 1963-2003	AO	97	3	1	10	3	2	1
Do. do. 3% "B" 1934-2003	MS	97½	3	1	6	3	1	9
Do. do. 3% "E" 1953-73	JJ	100	3	0	0	3	0	0
Middlesex County Council 4% 1952-72	MN	114	3	10	2	2	17	10
† Do. do. 4½% 1950-70	MN	116	3	17	7	3	1	6
Nottingham 3% Irredeemable	MN	96	3	2	6	—		
Sheffield Corp. 3½% 1968	JJ	107	3	5	5	3	3	0
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS								
Gt. Western Rly. 4% Debenture	JJ	115	3	9	7	—		
Gt. Western Rly. 4½% Debenture	JJ	125	3	12	0	—		
Gt. Western Rly. 5% Debenture	JJ	136½	3	13	3	—		
Gt. Western Rly. 5% Rent Charge	FA	134½	3	14	4	—		
Gt. Western Rly. 5% Cons. Guaranteed	MA	131xd	3	16	4	—		
Gt. Western Rly. 5% Preference	MA	120½xd	4	3	0	—		
Southern Rly. 4% Debenture	JJ	113½	3	10	6	—		
Southern Rly. 4% Red. Deb. 1962-67	JJ	111½	3	11	9	3	6	8
Southern Rly. 5% Guaranteed	MA	131xd	3	16	4	—		
Southern Rly. 5% Preference	MA	121xd	4	2	8	—		

*Not available to Trustees over par. †Not available to Trustees over 115

‡In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date ; in the case of other Stocks, as at the latest date.

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